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PUBLIC LAND POLICY AND MANAGEMENT ACT OF 1975

HEARINGS BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 5224 and H.R. 5622

**TO PROVIDE FOR THE MANAGEMENT, PROTECTION, AND
DEVELOPMENT OF THE NATIONAL RESOURCE LANDS, AND
FOR OTHER PURPOSES**

**HEARINGS HELD IN WASHINGTON, D.C.
MARCH 21, 24, AND 25; APRIL 7 AND 11, 1975**

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CONTENTS

Hearings held:	Page
March 21, 1975.....	1
March 24, 1975.....	45
March 25, 1975.....	87
April 7, 1975.....	253
April 11, 1975.....	353
Text of:	
H.R. 5224.....	88
Subcommittee Print No. 1 (bill).....	139
H.R. 5622.....	254
Statements:	
Alderson, George, Director of Federal Affairs, the Wilderness Society.....	62, 395
American Petroleum Institute.....	491
Berklund, Hon. Curt, Director, Bureau of Land Management, Department of the Interior.....	2
Clusen, Charles M., a Washington representative of the Sierra Club.....	77, 474
Edwards, Howard L., vice president and secretary, the Anaconda Co., on behalf of the American Mining Congress.....	380
Evenden, Fred G., executive director, the Wildlife Society.....	473
Garrett, Tom, conservation director, Friends of the Earth (plus affidavits, State of North Dakota).....	412
Herbert, W. F., manager, Natural Resources, Southern Pacific Land Co., to the Statewide Natural Resources Committee, California Chamber of Commerce, April 24, 1973.....	495
Horton, Hon. Jack O., Assistant Secretary, Land and Water Resources, Department of the Interior.....	221
Kimball, Thomas L., executive vice president, National Wildlife Federation.....	451
Landstrom, Karl S., Arlington, Va.....	79, 340
MacCleery, Douglas W., Forester for the National Forest Products Association (plus suggested amendments to Subcommittee Print No. 1, and H.R. 5224).....	315
McGuire, Hon. John R., Chief, Forest Service, Department of Agriculture.....	30, 246
Rustad, Kenneth, commissioner, Fallon County, Mont., on behalf of the National Association of Counties, submitted by Jim Evans, NACo legislative representative.....	354
Summary.....	353
Smith, Dr. Spencer M., Jr., Citizens Committee on Natural Resources.....	77
Weber, John, representing the chairman of the Public Lands Council.....	46
Letters:	
Crandell, Harry B., director of Wilderness Reviews, the Wilderness Society, to Hon. John Melcher, dated May 16, 1975.....	482
Datt, John C., director congressional relations, American Farm Bureau Federation, to Hon. John Melcher, dated March 26, 1975.....	485
Denton, William R., vice president, Southern Pacific Transportation Co., to Hon. John Melcher, dated April 7, 1975.....	488
Edwards, Howard L., chairman, AMC Public Lands Committee, to Hon. John Melcher, dated April 28, 1975 (plus amendments).....	392
Garrett, Tom, conservation director, Friends of the Earth, to Hon. Joe Skubitz, dated June 11, 1975.....	448
Hagenstein, W.D., executive vice president, Industrial Forestry Association, Portland, Oreg., to Hon. John Melcher, dated April 16, 1975.....	489
Herbert, W.F., Southern Pacific Land Co., San Francisco, Calif., to Regional Forester, San Francisco, dated Dec. 9, 1972.....	495
Jackson, Peter V., executive secretary, Montana Association of State Grazing Districts, to Hon. John Melcher, dated March 31, 1975.....	486

IV

Letters—Continued

McGuire, John R., Chief, Forest Service, to Hon. John Melcher, dated May 6, 1975.....	Page 33
Mineta, Hon. Norman Y., Member of Congress, to Hon. John Melcher, dated March 12, 1975.....	40
Nesbit, Henry, president, Montana Association of State Grazing Districts, Malta, Mont., to Hon. John Melcher, dated May 8, 1975.....	491
Pettis, Shirley N., to Hon. John Melcher, dated March 21, 1975.....	39
Symms, Hon. Steve, Member of Congress, to Hon. John Melcher, dated May 5, 1975.....	484
Unruh, Russell S., president, North Fork Grazing District, Chinook, Mont., to O.M. Ueland, Administrator, Conservation District Division, Helena, dated March 10, 1975.....	486
Wilson, Cynthia E., Washington representative, National Audubon Society, to Cong. John Melcher, dated March 25, 1975.....	484

Additional information:

Affidavits submitted by Tom Garrett:

Edwin Britton.....	418
Ezra E. Evans.....	422
Robert L. Evans.....	424
Roy Evans.....	424
Donald Goven.....	425
Earl L. Goven.....	426
Alvin Wall.....	429
Harold Sellon.....	431
Albert and Pearle Wall.....	432
Ben Schatz.....	434
K.E. Peck.....	435
Richard Nathan.....	436
Herbert Nathan.....	437
Albert Klain.....	440
Kenneth Grabinger.....	442
Alvin Grabinger.....	444

Financing National Forest roads, background information for county government policy (prepared for discussion at National Association of Counties' Western Region Conference, Albuquerque, N. Mex., March 19-21, 1975).....	364
Major considerations for changes in the grazing regulations, submitted by Curt Berklund, Director, Bureau of Land Management.....	26
National Forest Roads and Trails Systems Act of Oct. 13, 1964.....	327
Questions submitted by Karl S. Landstrom, Arlington, Va.....	347

PUBLIC LAND POLICY AND MANAGEMENT ACT OF 1975

FRIDAY, MARCH 21, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC LANDS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 1302, Longworth House Office Building, Hon. John Melcher presiding.

Mr. MELCHER. The Subcommittee on Public Lands will come to order. This morning we are opening in this Congress our public hearing on the Land Management Act.

We have before us a subcommittee print, Public Land Policy and Management Act, which is print No. 1, which is about—well, which is truly what the subcommittee and the full committee have agreed on as far as we went last year when marking up of the bill was halted.

The subcommittee print contains the amendments that were offered and accepted in the full committee, but as it is here before us today, it also includes collective amendments that would have been offered and would have been accepted had the full committee continued consideration of the bill.

We don't look on it at all as the perfect document or what we will finally recommend be accepted and approved by the Committee on Interior and Insular Affairs, but we do recognize it as a starting point for this Congress.

Now, the administration bill, I understand, will be introduced—has been introduced. The administration bill has been introduced. It has been assigned number H.R. 5224, has not reached us yet from the Government Printing Office, but assuredly will be with us next Monday when we continue our hearings.

I understand that Congressman Ruppe introduced the bill by request and that it is further my understanding that it is very similar to the administration bill of the last Congress. Is that correct?

Mr. SHAFER. That is correct, yes.

Mr. MELCHER. Very similar?

Mr. SHAFER. And the Senate-passed bill of last year.

Mr. MELCHER. And very similar to the administration's recommendations and what the Senate passed.

Well, this morning and Monday the subcommittee will want to hear testimony principally on grazing. The administration bill doesn't suggest that there be a grazing section actually but the subcommittee last year, and as far as we went in the full committee here in the House last year, was intent on having a rather detailed grazing section and, furthermore, setting out the grazing fee by law, and I presume that the subcommittee will want to continue along that same

line in this Congress. So we will have to wait and see whether the membership of this subcommittee, as it is this year, has that intention.

So this morning our first witness will be Deputy Assistant Secretary for Land and Water Resources, Roland G. Robison, Jr.

I understand that Mr. Robison will not testify, but Curt Berklund, Director of the Bureau of Land Management will testify.

Mr. ROBISON. That is correct, Mr. Chairman.

Mr. MELCHER. Will both of you be at the witness table? If so, please come up. And you are accompanied by George Turcott.

STATEMENT OF CURT BERKLUND, DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY ROLAND G. ROBISON, JR., DEPUTY ASSISTANT SECRETARY FOR LAND AND WATER RESOURCES; GEORGE L. TURCOTT, ASSOCIATE DIRECTOR; JAMES W. MONROE, ASSISTANT DIRECTOR, LEGISLATION AND PLANS; GEORGE D. LEA, DEPUTY ASSISTANT DIRECTOR—RESOURCES; KAY W. WILKES, CHIEF, DIVISION OF RANGE; ELEANOR R. SCHWARTZ, CHIEF, DIVISION OF LEGISLATION AND REGULATORY MANAGEMENT, BUREAU OF LAND MANAGEMENT

Mr. BERKLUND. Mr. Chairman, if I could take the liberty I would like to introduce those with me today.

On my left is Roland Robison, Deputy Assistant Secretary for Land and Water Resources. On my right, George Turcott, Associate Director of the Bureau of Land Management. Jim Monroe is here with me, better known as Tim, Assistant Director of Legislation and Plans. Sitting along side of George Turcott is George Lea, Deputy Assistant Director for Resources. To his right is Kay Wilkes, Chief, Division of Range, Bureau of Land Management, and, of course, we have our ever-needed Chief of the Division of Legislation and Regulatory Management, Eleanor Schwartz, with us today.

Mr. MELCHER. Welcome to the committee. Curt, we will be glad to hear from you.

Mr. BERKLUND. Thank you, Mr. Chairman. It is always a pleasure to come before your committee and have the opportunity to discuss, frankly and openly, the problems that are common to our desires for better management. Again, this is no exception. We do appreciate this opportunity to discuss with you grazing permits, fees, and privileges today, and we will be prepared to get into that section of the subcommittee print No. 1 as the Department views this in relationship to national resource lands administered by the Bureau of Land Management.

As you know, the Department of the Interior strongly supports enactment of legislation that would clearly define the mission of the Bureau of Land Management, and recently sent to the Congress a proposal for such legislation. As we found this morning, it is H.R. 5224. I will discuss the proposal in some detail next Tuesday.

We believe that broad mission legislation, such as a National Resource Lands Management Act, should not contain specific limiting

provisions relating to the management of one use of resources on federally owned lands. This would appear to put a stamp of high priority on that use and resource. Concurrent with this presumption it would be suggested that equally detailed provisions for administration of other resource values be included in an Organic Act for the Bureau of Land Management. A general policy document with specific provisions for each resource use on the national resource lands would turn it into an unwieldy piece of legislation that would be difficult to administer or enforce. We urge that the committee would avoid this approach. Our philosophy runs to a broad document expressing the policy of Congress on resource preservation, use, and management.

We believe the Taylor Grazing Act provides the broad policies and authorities for our administration of lands for grazing purposes. Modifications or changes in the administration of these lands under the Taylor Grazing Act may be accomplished through amendment of the grazing regulations, without the necessity for enactment of new or additional legislation.

I would like to discuss briefly the revision of regulations that BLM is considering to meet present-day conditions and requirements. We plan to expose these changes to full public participation through a program that will give all interested parties the highest opportunity for comment on the regulations.

Since passage of the Taylor Grazing Act in 1934, there have been few substantial changes in the regulations as originally issued. The rules have accomplished the intended purpose of adjudicating livestock use allowances to qualified ranch operations and designating grazing allotments. Having accomplished all this, a number of important areas of change are now being considered. Emphasis on the environment and considerations for wildlife and other resource uses in the issuance of grazing permits need to be strengthened and incorporated into the regulations as a result of stringent requirements resulting from acts of Congress. Multiple use and environmental considerations are basic and viable objectives of the grazing management program, as are sustained yield of forage, and community and operator stability. For these reasons, changes in the regulations are being proposed to meet the modern-day needs for more intensive management of our national resource lands.

I will describe briefly how the new suggested regulations are intended to accomplish a needed update of management practices.

One: The regulations emphasize intensive management by allowing practices responsive to today's needs from a physical, livestock, and environmental standpoint. They will use the concept of livestock as a tool to change vegetation to reach multiple-use objectives for watershed, wildlife, and recreation. At the same time, they seek to increase livestock production. This will be accomplished through allotment management plans, frequently referred to as AMP's.

Two: They will strengthen environmental considerations by incorporating those statutory and regulatory requirements which clearly require improvement and maintenance of environmental quality. They will also tie range management activities to the Bureau's resource planning system for land use.

Three: The format of the regulations will be updated to improve the layout, readability, and understanding of the new provisions by the reader.

Four: The regulations will also provide more clearly for other uses by allowing accommodation of habitat needs for all wildlife; where appropriate for wild free-roaming horses and burros; and where required, for the allocation of range forage for wildlife and higher priority uses not compatible with domestic livestock grazing.

Five: Existing preference conditions and base property control requirements for livestock use on the public lands will be retained to provide for orderly use and stabilization of the industry.

Six: Range livestock operations will be improved by expanding the opportunities for economic betterment of the users. Specific forage crop production requirements will be eliminated, allowing for livestock operation flexibility whenever the national resource lands are under intensive management. Administrative details will be reduced and procedures streamlined for efficiency. This will provide more BLM manpower on the ground to assist all users of the national resource lands.

Seven: We plan, to the extent possible, to manage section 15 lands in the same fashion as section 3 lands. This will help reduce management distinctions between these two types of land which are similar in character and are subject to the same management objectives and will apply the same environmental planning and intensive management practices to all areas of national resource lands where we permit domestic livestock grazing.

Eight: Range improvement construction policies will be clarified and land use implications considered in the construction of livestock control facilities on the public lands.

Nine: Finally, the regulations provide better control of unauthorized use by requiring substantial penalty for trespass and the means to deal effectively with this problem.

These proposed changes are significant in scope and anticipated benefits to both the Bureau of Land Management and the user. The proposed changes have been presented to various interested parties, including the American National Cattlemen's Association, National Woolgrowers Association, National Resource Council, the Forest Service, conservation groups, and our field offices. We plan to continue such briefings and would be pleased to brief the committee staff in more detail on the proposal.

As to grazing fees, the Taylor Grazing Act provides for periodic setting of grazing fees by the Secretary of the Interior. The present policy is generally considered fair and equitable. New or additional legislation is not required and would not be desirable unless it would result in improved management of the national resource lands.

Subcommittee print No. 1 proposes a formula to set an annual fee for the grazing of livestock on lands administered by the Secretary. It would establish a minimum fee of \$2.00 per animal unit month of grazing. We are aware of no study or evaluation supporting the formula proposed in that bill. We are opposed to that or any statutory formula. In contrast, the formula used by the Bureau of Land Management to set fees was arrived at after extensive studies and public review.

Subcommittee print No. 1 would require that permits and leases for domestic livestock grazing on public lands be for a term of ten years except under certain conditions. Further, it would require the renewal of the permit if the permittee or lessee had complied with its terms and conditions.

Thus, in effect, the permittee would be granted a 20-year permit or lease upon compliance with the terms and conditions of the lease. The privilege of using the land would in effect become a proprietary right—a right not afforded other users of publicly-owned land, and a right given without any consideration for the condition of the land. This is in direct conflict with the Taylor Grazing Act and with sound multiple use land management.

The Taylor Grazing Act authorizes the Secretary of the Interior to issue permits not to exceed 10 years subject to renewal at the discretion of the Secretary. BLM issues 1-year to 3-year permits with 10-year permits issued when all environmental aspects have been considered and a cooperative allotment management plan is in effect. These management permits provide greater stability to the user's operation through more effective and improved management.

One of the serious issues since 1950 has been the problem of granting tenure to grazing permittees. It still is an issue. We believe provisions of the Taylor Grazing Act allowing permits up to 10 years with renewal at the discretion of the Secretary are superior to the provisions in subcommittee print No. 1.

Recently attention of Congress, conservation organizations, and the general public has been focused on conditions of the national resource lands used for grazing and other purposes. The declining condition of these lands was cited in the Public Land Statistics as far back as 1955. The Department has been aware of this trend and has prepared numerous papers and appeals to rectify this situation.

The Senate Appropriations Committee report on fiscal year 1975 appropriations directed the Department of the Interior to review its programs and range conditions and report its findings together with recommendations for correcting major deficiencies. The Department's report in response to this directive presents the status of the range management program, describes the conditions of the Federal rangelands, identifies potential for improvement, and makes recommendations for correcting deficiencies. To further assist the committee in its deliberations, the report includes the Department's recommendations for accomplishing the identified management objectives.

Present studies show only 28 million acres or 17 percent of the public grazing lands are in satisfactory or better condition. Some 135 million acres, or 83 percent, are producing less than their potential. Some 81 million acres, or 50 percent, are in fair condition, while 54 million acres, or 33 percent, are in poor or bad condition. Because of these conditions, the BLM has assigned a high priority to correcting identified deficiencies in problem areas related to grazing use in excess of the recognized grazing capacity and to insuring adequate supervision of rangelands. Corrective action is being taken Bureau-wide on administration deficiencies to insure compliance with the grazing regulations for national resource lands.

In summary, analysis of data shows that 16 percent of range conditions are deteriorating while 19 percent are improving because of

intensive rangeland management practices. Significant decline may continue. BLM believes the best solution for significantly correcting these deficiencies is acceleration of the intensive management and development program to arrest deterioration and increase the productivity of the public lands for a multitude of uses.

We believe that the Taylor Grazing Act provides adequate authority and specific direction for grazing administration on the national resource lands. Consequently, we do not think specific new legislation in this area is necessary at this time.

We urge that our new program directions be given an opportunity without the encumbrance of new legislation or legislatively required programs either on grazing fees, tenure or duration of grazing leases.

Subcommittee print No. 1 has a specific provision relating to grazing district advisory boards. We believe that advisory boards should be broad-based and multiple-use oriented, as the Federal Advisory Committee Act requires. Multidisciplinary advisory input is essential to good land management.

This concludes my prepared statement. I will be pleased to answer questions.

Mr. MELCHER. Thank you very much, Curt. Now, I am going to follow your testimony. I have earmarked three or four places where I would like to have you supplement your testimony with more detailed answers.

Mr. BERKLUND. Very well, sir.

Mr. MELCHER. A general policy document with specific provisions for each resource used on the national resource lands would turn it into an unwieldy piece of legislation. Now, what are the—that is your critique, not getting too specific about grazing as a section in a land management act, but what are the principal uses that are comparable with grazing on the lands that BLM administers?

Mr. BERKLUND. Mr. Chairman, we feel that all the uses of the public lands will have to be weighed. As far as the acreage and the amount of use, grazing is still the largest use of the public lands. But we have energy development that has to take place on the public lands if we are to meet the goals of the President. We have extensive recreation that is taking place on the public lands today with great need for management, and wildlife habitat is of critical concern to all of us.

Mr. MELCHER. All right. Now, on energy development, you of course, are involved, I am sure, with another Subcommittee on Mining recommendations for amendments to the Mineral Leasing Act, isn't that correct?

Mr. BERKLUND. Yes, sir.

Mr. MELCHER. You started on that. I know the subcommittee has started hearings on it. I am sure you are participating in that, is that true?

Mr. BERKLUND. Yes. We have testified already, now, sir.

Mr. MELCHER. All right. So in terms of energy development, then, as one of the major uses of public lands, you would be addressing yourself on that use through that act, would you not?

Mr. BERKLUND. Yes, sir, that is correct.

Mr. MELCHER. And certainly that does not go on here.

Mr. BERKLUND. That is true.

Mr. MELCHER. There could be, as far as—you mentioned energy development on the public lands to meet our growing energy needs, and of course, you could be referring to strip mining of coal, couldn't you? That could be a part of it.

Mr. BERKLUND. That is one of our programs. Removal of the surface coal.

Mr. MELCHER. I want the record to show that the projection for the development of coal in Montana on BLM lands by the State director was 5,000 acres in the next 10 years. I want the record to show that to get this in perspective, because I think this is just thrown around like, you know, boy, are we ever going to develop this federally owned coal. Montana, according to other people in the Department, is supposed to have the greatest amount of coal of any State in the country, supposed to have by far the greatest amount of strippable reserves. Now, I do see some conflicting figures. I get this—I think it is the USGS that supplied this figure of 42 billion tons of strippable coal in Montana, and yet I read in the Congressional Record and in numerous newspaper stories of the total strippable reserves of coal in the United States as being 33 billion.

Now, this is a little bit out of your—33 billion tons. This is a little bit out of your testimony, but do you have any answer for this? Does anybody know why that discrepancy?

Mr. TURCOTT. Mr. Chairman, perhaps sometimes we in BLM are as confused by some of the figures from different sources, not all of them Federal, as you are. I do know this, that some of the printed figures have different points in time as to when they were developed. We will furnish for the record the most current figures we use in BLM as derived from the combination of USGS and the Bureau of Mines. They are our principal sources.

Mr. MELCHER. All right. I appreciate that, George, and it would also help at the same time in this particular area if you would supply from Wyoming what that State director's estimate is of how much land administered by BLM will be strip mined for coal within the next 10 years.

Mr. BERKLUND. Mr. Chairman, there are five of the western States that have major deposits of strippable coal and we would like to supply the figures on all five of those States for you.

Mr. MELCHER. I would appreciate it because I want to point out that 5,000 acres in Montana out of 8 million acres that are administered by the BLM in Montana is a very small percentage, and that projection, if it is accurate, as the projection of 5,000 acres to be strip mined by BLM over 10 years, is not a very high percentage.

Mr. BERKLUND. Mr. Chairman, what we are working from, as you well know, are estimates and our program that we have proposed, that we are preparing the environmental statement on now, EMARS, will try to define and bring into focus all of these projections and try to give us numbers that we can work with in the development of this program.

[The information requested follows:]

The estimate of 42 billion tons of strippable coal in Montana came from a 1972 Geological Survey report. A Bureau of Mines report as of January 1, 1974, had a formula by which the coal reserve base was calculated and resulted in this estimate of demonstrated coal reserve base of measured and indicated coal categories as defined by the Geological Survey (100% of coal in place) surface only:

Wyoming—28 billion short tons.
 Montana—65 billion short tons.
 Colorado—14 billion short tons.
 New Mexico—2 billion short tons.
 Utah—4 billion short tons.

This reserve base is not a fixed quantity but will increase with discovery and additional development and decrease with mining, and change if the criteria for its calculation are modified.

Recoverable reserves of Federal coal leases forming logical mining units currently in production:

	<i>Million tons</i>
Colorado.....	50.5
Montana.....	504.1
New Mexico.....	99.9
North Dakota.....	193.7
Utah.....	0
Wyoming.....	520.0
Total.....	1,368.0

Otherwise: 66% percent of coal reserves are recoverable by strip mining. Cannot furnish any estimates by State.

Mr. MELCHER. Thank you. Do I detect, Curt, that you are going to strongly oppose the retention of these committees that have functioned as advisory boards under the Taylor Grazing Act up until January of this year?

Mr. BERKLUND. Yes. We feel strongly, very strongly, that we need broad-based multiple-use advisory boards. We have prepared draft regulations to establish a series, three levels of advisory boards, and we want to maintain those three levels. As you know, there has been a suit brought against us now and we are waiting for a court decision that will determine whether there will be grazing district advisory boards. The regulations that we have proposed will give us in administrative district multiple-use, broad-based advisory boards.

Mr. MELCHER. No, I am not aware of the suit. Tell me about the suit.

Mr. BERKLUND. Well, I think I will let Mr. Robison speak to that. He is working on it. Or Jim Coda is supposed to be here.

Mr. MELCHER. It kind of helps to have counsel with you.

Mr. BERKLUND. I will let George—he is my legal counsel today, Mr. Chairman.

Mr. TURCOTT. I can't talk to it from an attorney's standpoint. Several months ago some very good friends of mine in northeastern Nevada joined together and filed suit in the Nevada district court to test the legality of the Bureau of Land Management and the Department of Interior's determination that the grazing district advisory boards now covered under section 18 of the Taylor Grazing Act were in effect canceled out or rescinded by the passage of the most recent Advisory Board Committee Act. I have got the citation here someplace, and I will furnish this for the record.

[The citation follows:]

John C. Carpenter, Jr., et al v. Rogers C. B. Morton et al. Civil No. R-75-1-BRT, USDC Nevada.

Mr. TURCOTT. They did not ask for an injunction. The Department of Justice has requested and received a 30-day extension of time to file rather voluminous and legally complex briefs in this matter. We do not expect hearings before the Federal district court for Nevada until probably sometime in early fall. September is when we anticipate it, although the judge has not set any definite date yet.

Mr. BERKLUND. Mr. Chairman, what we have proposed is to have a multiple-use advisory board at the district level, but it will be on administrative districts instead of grazing districts and then a State multiple-use advisory board and a national multiple-use advisory board.

Mr. MELCHER. What is an administrative district?

Mr. BERKLUND. That is the area of BLM-administered lands under the jurisdiction of a district manager. That would be an administrative district for BLM. Right now some of these districts have two or three grazing districts or parts of grazing districts within one administrative district and in some areas we have more than one administrative district in a grazing district. So there is overlap. We have certain groups advising more than one district manager at the present time.

Mr. MELCHER. Would you have 1, 2, 3, or 10 advisory boards in Montana? If you had your way?

Mr. BERKLUND. Five. We have five administrative districts. There would be five district advisory boards. It wouldn't only be on section 3 land this way. They would cover all of the BLM lands. Right now the advisory boards represent grazing districts and only section 3 lands. Ours will include section 15 lands as well.

Mr. MELCHER. Now, couldn't you—did the Taylor Grazing Act prevent you from having your advisory boards relate also to title 15 lands?

Mr. TURCOTT. Yes.

Mr. MELCHER. Only dealt—

Mr. TURCOTT. Section 18, to paraphrase, applies only to the formal grazing district, so that the section 15 lands do not have that type of board. In some areas we have been able to augment a district board, but it is not completely under section 18. For instance, in Missoula we don't have any. Down in Casper, in a somewhat analogous situation, where it is mostly all section 15, we do have a special board approved by the Secretary.

Mr. MELCHER. Approved by the Secretary.

Mr. TURCOTT. Yes.

Mr. MELCHER. Under existing law?

Mr. TURCOTT. Two districts in Alaska have none.

Mr. MELCHER. Well, if you did it down in Casper under existing law I guess you could do it other places if you wanted to.

Mr. BERKLUND. You could, but they would not be section 18 advisory boards, but there could be an advisory committee, yes, sir.

Mr. MELCHER. Yes. All right. Now, one other thing on this particular point. Under the Taylor Grazing Act and under the advisory

boards stipulated by the Taylor Grazing Act, could the makeup—the makeup of who was on the board didn't limit you to putting wildlife people on or recreation people on, did it?

Mr. TURCOTT. Yes, with respect to nonwildlife recreation people.

Mr. BERKLUND. Yes.

Mr. MELCHER. It did? You are statutorily prohibited from including that on the board?

Mr. BERKLUND. Yes, sir.

Mr. MELCHER. Well, five advisory boards in as large a State as Montana would mean that access to an advisory board might mean like 200 or 300 miles away from the ranch headquarters. Would it not?

Mr. BERKLUND. That is true. Some of them have two advisory boards in a district. By putting one in each administrative district it would make a change. I will let George speak to that for you.

Mr. TURCOTT. There are five formal grazing districts in the State of Montana. Two are out of the administrative headquarters, district headquarters, at Montana City. Nos. 2 and 3. Malta is No. 1. The Billings area is No. 4. Dillon is No. 5. Five formal grazing districts. They each have a board. Missoula does not have a board. It is the sixth administrative district in the State of Montana.

Mr. MELCHER. Are you telling me, George, that you are going to cut down on the number or remain—

Mr. TURCOTT. No, sir.

Mr. MELCHER [continuing]. Remain about the same?

Mr. TURCOTT. The regulations that have been submitted to the Secretary's Office as a final rule call for a balanced multiple-use advisory board for every district—area of administration—office we have. That would call for six in the State of Montana. The boards would have a limitation of 10 each in total as to membership.

In terms of balance, we can talk about an area that we both know well. Let's talk about eastern Montana. I couldn't conceive of a district administration multiple-use advisory board that would have less than 3 or 4 livestock representatives on it of the 10. I most certainly would think that it would include representatives of county government, or at least the local planning commissions, whatever the States have. There should certainly be people there representing one or two kinds of recreation use, rock hunting, ORV use, whatever it is. The wildlife interests would have to be represented. The mining interests, or at least in eastern Montana the oil and gas interests should be represented. So that there is a real broad-based grassroots local advisory input to this district manager on all matters of importance that would come before the district manager.

In addition, of course, to this are all of the now formalized and institutionalized public meetings, public hearings, public participation processes that we have.

Mr. MELCHER. Well, first of all, we are talking about—I have no quarrel with your concept of broad-based advisory boards. I think it would be very wise, very prudent, very forward looking, very much needed. But we are talking about advisory boards that had to do with the Taylor Grazing Act. Really, the Taylor Grazing Act, as I understand it, didn't get into mining or oil and gas leasing. So I am not—

I agree. Have your advisory boards on these other aspects. But my line of questions isn't to the same point as you gentlemen are bringing us. I am asking about dropping the advisory boards from the Taylor Grazing Act which is, you know, just about grazing.

Now, you might say, well, you don't want too many advisory boards. Well, I understand that point, too, but advisory boards that have existed—and I understand generally as far as the livestock people were concerned they thought they were a good idea—did take into consideration wildlife.

I think you mentioned, George, that 10 members be on each board. One of them, of course, would be or should be somebody representing wildlife management. Now, that may be a very small percentage, but I can't really think that somebody that has a great interest in serving on a board because he might be interested in oil and gas production would necessarily share the interests of the nitty-gritty of what to do about grazing, but I think in the overall concept you have to—if you are going to follow multiple-use practices, I think such a board covering the whole broad spectrum of the uses of the public lands is indeed very worthwhile and meritorious. But my point is those grazing boards as were set up and have operated for so many years, if they were of good service for one of the predominant uses of BLM lands, namely, livestock grazing, let's find out whether they are worth keeping, and not rule out broader boards that you are also recommending.

Mr. BERKLUND. Mr. Chairman, the advisory boards had a very, very important function at the time of the passage of the Taylor Grazing Act. We had to adjudicate the grazing privileges on the public lands, and hear the appeals of the ranchers, and the boards were elected out of their own numbers. There was one wildlife representative on the Taylor Grazing Act advisory boards. At the present time, if there are some privileges that remain to be adjudicated, I am not aware of where they are. But the boards have served their purpose. They have done a splendid job. They have been very useful, but now as the uses of the public lands expand and the adjudication process is over, shouldn't we look to the new advisory boards to help us and assist us? We can call in as consultants some people that we feel have the competence to help us if there is adjudication. If there is a protest on grazing privileges, we can call these people in as consultants to advise the district manager, but with the adjudication complete we feel we have to now look at the broad base of all uses of the public lands.

Mr. MELCHER. I yield to the gentleman from Nevada.

Mr. SANTINI. Thank you, Mr. Chairman. I happen to share the Chairman's sentiments, that I don't find the two are mutually exclusive. I think they could be compatible and serve a joint objective, if you will.

It seems to me on the basis of my communications in an attempt to understand both the position of the Department and the position of cattlemen on this issue that the cattlemen perhaps represent an isolated group of those who are trying to derive economic sustenance, in some instances survival, off the land. I think they represent a very unique problem area. They are not an across-the-board multiple use

problem area exclusively, but those who have over in many instances a great number of years been using the land as a basis of livelihood.

I think it does represent a distinct and unique problem, and to my mind, at least, it would suggest a board to meet that problem and converse in that arena on a person-to-person basis, and the severance of this communication to them at least by their interpretation is another example of the efforts on the part of the Department to further isolate itself from any communication with those using the land.

I think at the very least it is ill advised, from a public relations standpoint as we discussed informally a time or two, and I think there may, No. 2, be a serious question of legality and that will be reconciled in the courts; and No. 3, I would just urge as a matter of your administrative prerogatives to please give serious consideration to the retention of these boards and to the recognition of their importance to the cattle industry.

I would appreciate your thoughts and responses to the contents of my observations.

Mr. BERKLUND. Congressman, we recognize your concern. It is a concern of many people in your State. We find that there is a great resistance to change. We have found that as we moved out to make changes in the national advisory boards that we had the same resistance. But we found many of the same people coming back wearing another hat. Very few of the ranchers per se are ranchers. Many of them represent local government, wildlife, and other interests, and the same people are there, but because they don't have the title of livestock representative that it constitutes a change, and we find some resistance to it.

Mr. SANTINI. Change per se is not good or bad. I think change has to sort of suggest itself or at least the advocate of change has to lay a premise of evidence that warrants the transition or change, and I think therefore the burden would be with the Department to suggest there is no utility or purpose or service to be rendered by these boards any longer. Perhaps our views differ on this, but I happen to feel that there very definitely is a need for continued communication input from the industry in this realm.

Mr. TURCOTT. Well, sir, I don't want anybody to think that the views and the values of the domestic livestock grazing industry and the economics of it as practiced in the West is going to be forsaken whatsoever by the Bureau of Land Management. The very definition of multiple use in the committee print talks about balanced uses. It doesn't get at priority uses unless they can very definitely be determined under certain situations.

Mr. SANTINI. But, are they mutually exclusive, returning to my original question?

Mr. TURCOTT. No, they are not. This is what I am leading to. As I said, in any kind of a substantial administrative district area of any kind, where there is any substantial kind of domestic livestock industry going on at all, there are going probably to be 3 or 4 of the 10 people on these boards who are going to be ranchers. But now at the same time I will have to say that of all of the biological values on these public lands, any grazing animal, whether it be a cow or sheep

or elk or antelope or deer or whatever it is, has the most significant effect on the proper condition of that rangeland resource.

Now, here is the chance, if we believe in the principles of the committee print or the administration bill, to get at balanced use, to get at balanced advice. Here we have the chance to do it. The livestock people are going to be very strongly represented on these multiple use boards, but they are going to be there for the confrontation, the sharing of views with people very knowledgeable in wildlife matters, recreation, watershed, county planning, and so forth. Their prerogatives as to the most universal use are going to be fully considered by these boards.

Now, the last point, if I may, sir—think of the incongruity we have if we go to a two-board district system if the legislation goes through as the committee print states. To review just grazing matters before a newly augmented Taylor grazing system board, they will go through such things as the cut and grazing allocation processes. They will get involved with range improvements, things like that. Then we would have the multiple use board at the district level, another avenue of advice, public participation with the district manager. I can't see how it is going to work, taking one set of recommendations from a single value standpoint, coming before a multiple use board and going through it all again. It seems incongruous to me when I know that the livestock man's values are going to be fully reviewed and considered by multiple use boards with his peers on that board, probably in the predominant numbers.

MR. SANTINI. There is a very logical distinction between the use of the land for purposes of earning a livelihood and the use of land for recreation. Now, they overlap in the sense that they may well pertain and often times do pertain to the same land, but they don't pose and present the same issues. And I don't—the recreationist, in whatever form that interest is represented, and the person earning a livelihood will present or pose two different issues to the board and to the Bureau for its evaluation and consideration on how that land should be used. But to my mind it is far more logical to have the two interests separated and presenting their position and their thoughts on the use of the land than it is to overlap them and to a significant extent obscure those who are trying to earn a living from the land or make the land productive from an economic sense rather than productive in a recreational sense.

MR. TURCOTT. I can just say this. I can see what is going to come. The wildlife interest will want their board especially in such areas as the chairman's district. In eastern Montana 40,000 out-of-state antelope permits are issued each year. One of the highest cash income sources for eastern Montana comes from this. The same in Wyoming. In our mutual home State, sir, in the northeastern part of the State, 4,000 out-of-State deer permits are issued, one of the most lucrative sources of cash revenue during an economically slow time of the year. They will want one. You can go into Oregon. You will get the rock hunters. They will want a board because it is a high-intensity activity, and away we go ad infinitum. Still, most of these interests and values would be covered on a district multiple-use board. Don't forget the Director's statement, Sir, that on questions of grazing qualifications

through the use of consultants there will be a special effort made to enable ranchers' peers to say, yes, we think your qualifications are this, or no, we don't. We can also use the livestock associations and several other alternatives.

Mr. SANTINI. Do I then deduce that the Bureau's mind is made up on this issue and that there is no realm left for discussion?

Mr. TURCOTT. Well, sir, we are working with the Solicitor's office and the Department of Justice in opposing this suit filed in the State of Nevada, so the answer has to be yes.

Mr. MELCHER. I would like to get into the question of the—we believe the provisions of the Taylor Grazing Act allowing permits up to 10 years with the renewal action of the Secretary are covered in Committee Print No. 1. Since this is something that is very important to the management of the public lands and grazing, I would like a little more detail on what the differences are in Committee Print No. 1 and the existing practices of the Secretary. For instance, it is my impression that the Secretary almost automatically renews a permit year after year, that his reason for not renewing would be to utilize the land for a higher value, or for reasons that the permittee had violated the regulations of the Secretary. And I am well aware that that is exactly what is in Committee Print No. 1. So at what point are we differing?

Mr. BERKLUND. First, our policy is to issue 1- to 3-year permits pending completion of an AMP.

Mr. MELCHER. Well, that is a different point.

Mr. BERKLUND. OK. You say you issue unless you meet these criteria. We take a different approach. We want to encourage intensive management through AMP's, so we have taken two separate approaches there.

The first section of your committee print (a) and (b), therefore, give us a great deal of concern. If we start your section with section (c) and read through I think we are almost on track. From there on through you are putting into legislation the practices of BLM almost—except for minor word changes, but it is the first two sections that give us a great deal of concern on permits. That is section 211 (a) and (b). That is the major difference in our approach and your approach, Mr. Chairman.

Mr. MELCHER. What page is that on?

Mr. BERKLUND. Page 33.

Mr. MELCHER. Well, that is an annual fee. That is a statutory fee. That has nothing—

Mr. BERKLUND. No, section 211, sections (a) and (b).

Mr. MELCHER. I am in 210. Excuse me.

Mr. BERKLUND. Those two sections are the major difference between our administrative approach and your legislative approach. If we were to start our discussion with (c) except for word changes I think you have almost outlined our administrative approach in the remaining part of that Section 211. It is just (a) and (b) that are really troublesome to us because a grazing permit now is—unless there is another higher use, it is practically in perpetuity and that is what you say in concluding your statement on this section. So I don't see a great deal of difference except in those first two sections.

Mr. MELCHER. You are using in your testimony the words "Taylor Grazing Act" allowing permits up to 10 years with no more discretion. It seems to me the Taylor Grazing Act directs the Secretary to issues leases up to 10 years.

Mr. TURCOTT. Yes. There is a discretionary provision in the Taylor Grazing Act allowing the issuance of permits for up to 10 years. In addition to that there have been interpretations which we have long used, for 35 years, that we can issue an annual license, renew it each year. The license and permit are the authorizing pieces of paper that are used now within a grazing district.

Now, this is the real problem. Commencing just before World War II, and subsequently thereafter, there was a tremendous push put on by the livestock industry to utilize that section of the Taylor Grazing Act for the issuance of permits for up to 10 years. They were issued by the thousands and probably two-thirds of the then 22,000 livestock operators in BLM got them. What this set up was a system of management that we have paid a penalty for ever since. A rancher got an annual bill because he had a 10-year permit. No management standards or no maintenance or reaction to range conditions year by year were put into these permits at all. Sure, there were terms and conditions to do it, but it wasn't done.

Now we are coming right back to it with the provisions in your proposed statute, sir, where BLM will have to issue a 10-year permit whether or not we have got the intensive management worked out, the mutual planning with the operator, the livestock operator, and the other multiple use values determined or not. That is our objection.

Mr. MELCHER. Is the intensive management the same as allotment management plan?

Mr. TURCOTT. Yes, sir.

Mr. MELCHER. And is it still the same as it was last year when we discussed this that you are not going to have those plans completed until the year 2000?

Mr. TURCOTT. We hopefully in our programmatic impact statement on grazing can cut it 10 to 15 years under that.

Mr. MELCHER. From 10 to 15 years now or 10 to 15 years under 2000?

Mr. TURCOTT. No. We hope to get it somewhere around 1990, 1995.

Mr. MELCHER. 1990, 1995, and in the meantime this Congress shouldn't act on that point.

Mr. TURCOTT. Yes.

Mr. MELCHER. We should wait 25 years to act, 20 years.

Mr. TURCOTT. No, sir. What I am saying is what we are doing at the present time is we will issue a 10-year permit if we have an allotment management plan worked out with the operator. We are more than glad to. But his planning effort, his skill are in there. The multiple-use values are recognized and the rest of it. We'll permit up to 3 years in certain situations where we think the range conditions are satisfactory and we have got enough environmental data to it. Otherwise we want to continue on the annual renewal license basis.

Mr. MELCHER. Well now, we are also talking about what we call section 15 lands.

Mr. TURCOTT. No, I am not. I am talking within the districts.

Mr. MELCHER. In the proposed law we are talking about, as I understand it, section 15 lands.

Mr. TURCOTT. Your proposed bill includes it, but we have about the same kind of program going on with respect to the section 15 leases, too, sir.

Mr. MELCHER. Well, of course, you know, sections 15—George, when you were making your remarks about having a strong desire to get away from this concept of 10 years, your strong desire to get away from the 10-year deal with section 15 land hasn't transmitted itself down to the lower levels, has it? Surely all—has it?

Mr. TURCOTT. Yes, it has. It is in the regulations and instructions, and if it is any kind of substantial acreage in the section 15 lease at all.

Mr. MELCHER. I know there are a lot of very small leases in——

Mr. TURCOTT. In some of these 40-acre tracts, no, sir.

Mr. MELCHER. I am not going to belabor this, but at any rate, what is in the bill is pretty much the program you have been following, and I understand what your objection is. You want to make the allotment management plan a portion, a condition of having some assurance of tenure.

Mr. TURCOTT. No. No, sir.

Mr. MELCHER. You don't?

Mr. TURCOTT. I sure don't. That is real critical. The Taylor Grazing Act gives these people tenure as long as they live up to the rules and regulations and the facets of law that they must comply with.

Mr. MELCHER. Oh, well, that is all we are trying to say, I think, in our language here, is that they would have some assurance.

Mr. TURCOTT. That is right. The term is insignificant as far as tenure is concerned under the Taylor Act now. What I am objecting to, sir, is the way I read this, that ipso facto we will have to issue a 10-year permit whether we are ready to do it or not.

Mr. MELCHER. Well, I think maybe we ought to just say without saying 10 years, that as long as the permittee meets the regulations of the Secretary he will get first chance at that lease. Of course, subject to the other provisions, putting it into a higher use, and then we drop the 10 years. We probably are going to come into line with what you are thinking.

Mr. BERKLUND. That is right. If we drop sections (a) and (b), start with (c) you have said that in the balance.

There was one major change that everyone should be aware of and that is to compensate the operators for their authorized improvements on prior termination.

Mr. MELCHER. Do you agree with that or disagree?

Mr. BERKLUND. We are on record as disagreeing with it, sir.

Mr. MELCHER. Yes. Well, of course, it makes good horsensense, just put it that way, because you would have a mutual interest then in the improvements.

The gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman.

Mr. Director, I would like to give you about a 10-second lecture on the Steiger philosophy of Government. It is very important, so you feel free to take notes or whatever you want to do. The fact is that

when man determines a mission inevitably he approaches it with zeal and with some understanding. When he institutionalizes that determination and forms a structure, whether it is a Government structure or private structure, automatically then the people involved in the structure have to devote a certain amount of time to justification of their existence and the longer the structure exists, the greater the attention is paid to the justification and the less to the mission, and I will tell you that BLM is my best laboratory example of that.

Now, Mr. Turcott is a sincere, decent, understanding guy. He knows the processes and he knows the problems. He is wrong, dead wrong, in his approach, not because he is anticowman, but because logic has simply fled the window in this massive attempt to justify existence.

Now, the 10-year mandatory lease is a good example, a great example. The logic in the 10-year, if you will, mandatory lease is a very simple one. The permittee is going to be encouraged to maximize his investment on a 10-year basis. As the situation—and that was obviously the intent in the original act.

Now, the idea—and George also believed, Mr. Turcott also believes that the wisdom of the Bureau is infinitely superior to the wisdom of the permittee because the permittee is motivated by a necessity to stay alive and the Bureau is objecting in that it is able to view the thing on a balanced basis. That is wrong, just dead wrong. The concept, and it is best personified by the attitude about the advisory boards, the attitude—the Bureau's attitude about advisory boards implicitly says that the cowman can only be a nuisance because there is no way he can be objective. He has to be greedy. He has to interfere with the multiple use.

Now, the one place where it doesn't fly, absolutely collapses, is the Forest Service experience with their advisory boards and your experiences with your advisory boards, in the same country, in the same area, side by side. Will you explain to me what the distinction is, why the Forest Service apparently has got a happy relationship, their multiple-use demands are far greater than yours, yet they do not see the need to abandon the grazing advisory boards.

Now, have you—I am sure you have been asked that question before and I would be interested in the response.

Mr. BERKLUND. Congressman, very seldom do I disagree with you, as you well know.

Mr. STEIGER. I can understand that.

Mr. BERKLUND. But I think if you would take a look at the section that we have agreed that pretty well lays out our philosophy. Go to your section F, 211, and you have laid out all the assurance that the operator needs except for the issuance of the 10-year permit that we don't do until we have completed an AMP. You say in there that:

So long as the lands for which the permit or lease is issued remain available for domestic livestock grazing, no permittee or lessee complying with the rules and regulations promulgated by the respective Secretary and who has complied with the terms and conditions of the permit or lease shall be denied the renewal of such permit or lease.

That has been our philosophy and will continue to be, but it doesn't say that you give a 10-year permit except for these conditions. We say we will give you 1 to 3 years in certain situations, when we have

taken into consideration all the other values, all the other uses of the land. When we have completed our AMP, then we can look out ahead 10 years. We will give you a 10-year permit, but we have to recognize that there are going to be changes until we reach that 10-year permit.

Mr. STEIGER. That is amazing, Mr. Director. You came to us from the real world, a great success, unqualified, I will state that, a man that confronted reality all his life and you have been downtown just a few years and look at you. They have melted your brain. You are approaching this from the back side.

What magic is there about the 1- to 3-year lease? What magic is there that says the 1- to 3-year lease is going to automatically protect the land better than the 10-year lease that as a practical matter, whatever is wrong with the land now or right with it, has been accomplished under the 1- to 3-year lease. I don't know what percentage of the 10-year leases there are, but you know there are very few.

Now, I don't expect you to magically see the light and reverse your position, but I am going to tell you on the basis of—you have got the worst end of this thing because not only do you make our constituents mad where it automatically, of course, involves us, but you are wrong. Now, that is the happiest of all possible positions for us and we are going to just have to run over you on this one, and I just want you to know that it is not because of any personal situation. It is just because you are wrong. And the language in your statement on page 6 is one that really shocks me in light of your devotion to the 1- to 3-year lease, and I quote:

The privilege of using the land will in effect become a proprietary right—a right not afforded other users of publicly owned land, and a right given without any consideration for the condition of the land.

Now, you are telling this committee that you are incapable of writing a lease that would demand that if the land is abused the guy has got to stop it. I don't care if that lease is for 100 years or for 6 months. If you are incapable of devising a lease which says that if you abuse this land, you are—your permit is just cancelled, then really we don't need you at all.

I wish you would consider that. I wish you—well, I know you won't, so I won't even ask you to respond, but that is the whole—that is the thing in a nutshell. You are defending a process that I am not even condemning, but you are defending a process just on the basis that that is what you are doing now and you are defending a process on the implication that the management plan is going to bring, going to be all things to all men and the implication again or the posture says without a management plan the land is being abused, and that is just not true. Simply not true. In fact, many management plans aren't going to be successful in application and you may not stipulate to that, but I think you understand that. Only because man devises them regardless of what the motive is. So there is nothing inherently superior in either the permittee's outlook or the Bureau's outlook. I am sure there is error on both sides. But to assume that the Bureau is absolutely right and the permittee is wrong is just nonsense that runs through your whole argument here. And I can't get away from the fact that given a 10-year lease by law, the incentive to invest is greater, the ease of acquiring the money to invest is greater, and the

investment and the improvement and the management plan can't be done without the approval of the Bureau anyway. So I think you are beating a dead horse and I honestly don't understand it, and I—

Mr. SANTINI. Or cow.

Mr. STEIGER. Thank you. I appreciate that. Or cow.

OK. One other thing.

Mr. Chairman, I don't want to abuse this. I know we have a very important witness to hear from yet. But the studies that the 16 percent are improving, and whatever it is, 19 percent—16 percent deteriorating, 19 percent improving, you again give the implication, and it is an implication, that these are static conditions, that these are absolutes, that 50 percent are fair, 54 percent are poor or bad.

Now, again I know that you are aware that in a given area this spring when the—if there was a lot of moisture, a given area can all of a sudden change categories, and I don't think you are locked in it. I suspect maybe the figures take that into account, but the fact—the point I want to make is at the time of the analysis, whatever was done was done with the existence of the 1- to 3-year permits and that applied to the 16 percent deteriorating as well as the 19 percent that are improving, so in the final analysis, it is going to be the skill and cunning of both the permittee and the BLM man on the ground who are going to devise the best way to maximize that resource without defeating it, and all of the structure in the world—the only thing that greater structure is going to do, management plan, that is a structure. That is a whole new office in your office that is now going to review management plans. You say by the year 2000. You and I both know it is going to be nearer 3000 than 1990 because the guys who are doing it have to justify their existence and that is one of the problems, and they have to be reviewed and they have to be reviewed to the point of nausea and the final level of review, there are people who can't even spell cow and that is the problem.

So I hope you don't hang up on the prerogatives of the Bureau and I don't think you have, in fairness. I think in the main with the exception of the point the chairman has raised and the gentleman from Nevada, we need your advice. But I think you embarrass yourself and the Department when you come in here and try to sell a posture that you are now more concerned about multiple use than you have been before. I will tell you now you have always been concerned about multiple use, and properly so. You haven't always been able to implement that concern, but you are not going to implement it by new structures. You are going to implement it by a new awareness and the existing law gives you all the opportunity to implement that you need and to assume that somehow the cowman's advice is antiprogress and that the designation of the cowman as a member of a multiple-use board is going to change, it shows you have forgotten the real world. That is all I am telling you. So—

Mr. BERKLUND. Thank you for the new awareness, Congressman.

Mr. STEIGER. I knew you would understand right away.

Mr. Chairman, I won't belabor it, but I think in fairness you should know that I don't think this committee, at least it is my—I don't know of any advocate of your position on this committee. I am sure there are several urban advocates in the Congress, but I suspect that

they aren't justifying any existing structure. I think they can probably be persuaded that the position is simply not supportable.

I would be happy for a 10-second response if you have any. If you care to wipe me out in 10 seconds, you are welcome.

Mr. BERKLUND. Could I make a 10-second response, but George can summarize it in 20 minutes.

Mr. TURCOTT. The good Congressman and I have had our philosophical differences, but we both respect each other. I will say just two things just to correct the record. The Taylor Grazing Act has been tested clear up to the Supreme Court. The first Supreme Court case, *Brooks v. Dewar*, 313 U.S. 354 (1941)—he was a regional grazer then in northeastern Nevada—tested this and it was determined that term permits for up to 10 years were not mandatory. They were discretionary.

Second—

Mr. STEIGER. Excuse me. I will stipulate that. That is the reason we are putting them in. We want to make it mandatory.

Mr. TURCOTT. And the same argument—

Mr. STEIGER. We are not saying you are doing wrong or anything illegal.

Mr. TURCOTT. And as the corollary to that point, sir, your committee print 1, 94th Congress, under section 211(a), in the first sentence of that act, it says, "shall be issued for a term of 10 years subject to grazing capacity except as provided in section 2," and so forth.

All I am saying, sir, the current condition of the Federal rangelands managed by the Bureau of Land Management in my view in general are not good and they don't reach near the productive capacity they should for several purposes—basically because we were forced to issue those 10-year permits prior to World War II and shortly thereafter. We couldn't control it.

Mr. STEIGER. George, do you tune out when we are talking to you?

Mr. TURCOTT. No, sir.

Mr. STEIGER. There is nothing to prevent you in this law or in your own process now in the course of a 10-year lease to say you can't run this many cattle because this range is deteriorating. They are subject to grazing, subject to the conditions of the lease, and the lease says you can only run what the land will carry and if the lease doesn't say that, you had better rewrite the lease.

Mr. TURCOTT. "There shall be issued," and, of course, the cancellation originally is for this 2-year notification and all that, except in case of emergency. I wouldn't be a bit surprised, sir, if the total effect on any program that the Bureau will have, in terms of manpower and resources, will be to force the Bureau to be so conservative in issuing these term permits that we will be doing an injustice to the man when we want to turn around and get at the use of his art and managerial incentive, and do something to increase his use as the forage production increases.

Mr. STEIGER. Do me a favor. Read paragraph (d) on page 34. It is applicable. I assure you it has a direct bearing on 211(a) and it says, "nothing contained herein." Nothing means nothing.

Mr. TURCOTT. All right.

Mr. STEIGER. I mean there is no ambiguity. "Nothing contained herein shall be construed as restricting the authority of the Secretary

concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms or conditions thereof, or to cancel or suspend.”

Mr. TURCOTT. All right.

Mr. STEIGER. Now, if you can't understand that paragraph, then the paragraph is designed to allow management within the 10-year framework, and it does, and what you are saying is that we are doing violence to what you have been used to and that is all. You are just—you are not—either not understanding or not reading or anticipating a strawman that just doesn't exist.

One other thing. I did ask a question which was not responded to and maybe somebody can. How do you account for the happy experience of the Forest Service with their advisory boards and your desire to eliminate the advisory boards, and I don't want to pit you at each other, but I would be interested in how the Forest Service can be successful in their relationship and BLM cannot. If you don't know, maybe you ought to ask. I realize it is hearsay—does Macy's tell Gimbel's.

Mr. TURCOTT. No. We have discussed this at length and I will just have to defer, sir, to Forest Service to support and justify their position. They have little different systems than we do, but that is as far as I will go. My views on it are based on the fact that we want to live with the context of this bill, the definitions of multiple use, and so forth, balanced use. We feel strongly that a good balanced multiple-use board at the district level advising that district manager is entirely in keeping with the concepts of the various organic acts as submitted.

Mr. STEIGER. You are telling us there is a difference in the law or the structure of the Forest Service advisory boards, and the BLM advisory boards?

Mr. TURCOTT. Yes, sir, there is, but I am not expert at it.

Mr. STEIGER. Is that difference the reason that they have a happier experience? Is that your—

Mr. TURCOTT. I don't know, sir.

Mr. STEIGER. How come you haven't found out when you come in with what in our area is a very devastating recommendation? Nobody has ever checked with the Forest Service to see how everybody is getting along?

Mr. TURCOTT. Yes, sir, we have.

Mr. STEIGER. Maybe you could have recommended some changes that would be comparable to the Forest Service changes.

Mr. TURCOTT. I can only say in general on several occasions we discussed this at length with the highest officials of the Forest Service. They have a grazing advisory board under the Granger-Thye Act, providing good coverage of the grazing areas within the total national forest system. In addition to that, they have a multiple-use advisory board system that either covers regions, maybe to some extent, down to forests. I understand that they are looking hard at that and over the last some years have reduced the numbers of members on some of these boards. Maybe in some cases even have eliminated the boards. They have a dual system now.

The only thing I can say, sir, is I don't think that the national forests have the complexity of multiple uses that the BLM lands

have or the intensity of them, especially in certain situations. They don't have the mining and the mineral leasing problems that BLM has. They don't have the rights-of-way problems that BLM has. Just by the nature of forests they don't have the ORV problems that BLM has, and so forth. So perhaps that is one reason why they wish to continue the single use Granger-Thye Act boards. We both have a very high intensity public participation process. I know they use that as justification for their approach.

Mr. STEIGER. I just want to point out, Mr. Chairman, that what we are suggesting in Subcommittee Print No. 1 is that there be a two-stage advisory board, exactly as the Forest Service has gotten into. It just seemed—again, I fail to see the rationale.

Mr. MELCHER. The gentleman from Colorado.

Mr. JOHNSON. No questions.

Mr. MELCHER. The gentleman from Oregon.

Mr. WEAVER. No questions.

Mr. MELCHER. The gentleman from Nevada.

Mr. SANTINI. I don't know what the appropriate method is, Mr. Chairman, for entry of this kind of data in the record, but the gentleman from Arizona poses a fair, logical question as to the comparison of the two management entities within the Forest Service and suggests that they have been workable, functioning, and that it is a very realistic day-to-day administrative process within the Forest Service and why couldn't the Bureau consider adaptation of the Forest Service program or plan. There is some difference in the use of the lands you suggest with perhaps heavier emphasis on economic use on BLM land as opposed to Forest Service land, because typically they may not be as readily adaptable to grazing and other activities relating to economic use, but I do think it is a very, very fair question and I do think it deserves something more than a casual, no, we haven't checked and really don't know response. And whatever the convenient mechanism for you to reply for the record, I would strongly urge you to do so.

Mr. BERKLUND. Congressman, could I relate a little experience I had? Of course, not everything that my friend from Arizona says is true about me. But we had a problem with the National Advisory Board Council because of its composition. It was heavily dominated by one user group. That council or board took it on themselves to reorganize and get a better, broader balance. The credibility of that board was so low we were being attacked in the press all over. Everyone was skeptical of the advice. They restructured themselves and now they have been accepted by the general public. Many of the same people are there. There is some—they represent different interests.

Mr. MELCHER. Might I interrupt, Curt? I do so only because we are running out of time and we do have another witness, but I don't think you are responding to either the gentleman from Nevada or the gentleman from Arizona. They are saying why not review the advisory board the Forest Service has for grazing and what the Taylor Grazing Act called for and give a comparison. I think it is a reasonable request. I think we would like to have the critique of why you recommend doing away with the single purpose, almost single-

purpose grazing advisory board, noting that one of the 10 members was supposed to represent or is required to represent wildlife, and just compare that with what the Forest Service has been using. I think that is a very reasonable request, and I am sure you can do it for us. It would help us better understand your rationale. We may agree with you when you are all through, and I recognize the point you are making, that when a board supposedly dealing with a broad range of subjects becomes heavily weighted and oriented for only one purpose, they cease to have credibility. I recognize that.

Mr. BERKLUND. Mr. Chairman, that is what I was heading for, but I think I will submit it for the record because of the time. Thank you. [The information follows:]

The matter of having grazing district advisory boards as well as multiple use advisory boards has been discussed with the Forest Service on at least two occasions during the course of monthly Bureau of Land Management—Forest Service coordination meetings.

The Forest Service grazing district advisory boards are established under the Granger Thye Act. BLM's grazing district advisory boards are established pursuant to the Taylor Grazing Act. It is my understanding that the Forest Service has reexamined its advisory board program and has made some changes in it; that grazing district boards are established only when requested, and the numbers of members on the boards have been reduced in some cases. Forest Service is also continuing its multiple use boards. Although they claim they have no difficulty with a dual board system, I do not know whether they have ever had a situation where a grazing district board and a multiple use board have disagreed on the advice given.

By the nature of the national forests, they do not have the broad spectrum and extent of interests in lands that is reflected on BLM lands—for instance—rights-of-way, mining, mineral leasing, etc. They do not have the same off-road vehicle problems that BLM has.

It may be that the difference in the attitude of the two Boards lies in the differences in the laws establishing the advisory boards for the Forest Service and the Bureau of Land Management. The distinctions are subtle. It is the feeling that the Taylor Grazing Act through historical functions gives more authority than the Granger Thye Act. Taylor Grazing Act boards in the early days of the Grazing Service assumed many functions because of the vastness and complexity of the program in relation to funds and personnel available to administer it, and some boards have continued through the years to try to exercise the same prerogatives. However, with the resolution of many of the matters that they handled, this aspect of their operation has decreased significantly. In recent years the strict advisory nature of their function has been insisted upon by the Bureau. We find now, in light of BLM's multiple use mission, that a single use grazing board, even with wildlife representation, is inconsistent with multiple use concepts.

Mr. MELCHER. Yes. I have a question that I think is important. If I understand our dialogue today, if we had language in this bill that said that a permit or lease will remain in effect until the Secretary withdraws or puts the land to a higher use or the permittee or lessee has violated the regulations, that is about what our dialogue boils down to. Something along that line is pretty much acceptable to you, isn't it?

Mr. BERKLUND. That is section (d) that you have, sir. We don't find a great deal of concern there.

Mr. MELCHER. I mean that is what we are attempting to arrive at, to assure that if the land is available for grazing, you know, if you have a permit or you get a permit or get a lease, as long as it is available for grazing, that person is going to have the first chance and

could comply with the lease. I think we are pretty close to agreeing on the language.

I think people are hung up on what this ten-year thing means, and personally it doesn't mean a heck of a lot to me because I—what I would like to assure the permittee or the lessee of is if he continues, if the land is available for grazing and he continues to treat it right, he is going to get the first chance at it.

Mr. BERKLUND. Yes, sir.

Mr. MELCHER. That has been your policy. I know it has been your policy. Pretty much of the policy of the Forest Service. I think that is what the committee would like to have.

Now, can we have assurance from you, Curt, that while we ponder this subject in developing this bill, you are not going to have these new regulations that have been proposed implemented any further than they are?

Mr. BERKLUND. No, sir, Mr. Chairman, I cannot assure you of that. We had agreed that we would hold up any action until we had an opportunity to discuss this with you today. We would like to go to proposed rulemaking. We would like the opportunity to get the public comment which may be of assistance to this committee along with ourselves, and if we go through the normal process, we are not going to be able to go to file rulemaking probably until September, and implement the first of the year. I don't know what your schedule is for passage of this act. If we agree to hold over until you act here in the committee or in the Congress, I don't know. I couldn't commit to that.

Mr. MELCHER. When do we have the Secretary of the Interior before this committee?

Mr. SHAFER. He has been before the—

Mr. MELCHER. I mean this year, this Congress.

Mr. SHAFER. He has been here on the briefing session of the—

Mr. MELCHER. I mean this subcommittee.

Mr. BERKLUND. I think Assistant Secretary Horton may appear before you on Tuesday. I am not sure I will be here myself. One of us will be here Tuesday.

Mr. MELCHER. What I am getting at, we are well aware that the committee in the last Congress thought entirely differently on this subject than BLM did, what your ideas were and what your premises were. We are well aware of that, but—if the subcommittee feels the same way and the full committee feels the same way and the House agrees and the Senate agrees too, to a statutory provision on grazing that gives some guidance to BLM and the Forest Service—it hardly makes any sense to me for BLM's coming out with regulations that I am sure would be in violation of what we were going to do last year and did not accomplish, but which we may accomplish this year. It hardly seems that this is productive, a productive exercise of the prerogatives of the legislative branch versus the executive branch, and I would—I want to be assured before we conclude our hearings next week that we are not going to be running headlong into a confrontation because I think there is advantage to working together. But when you split the blanket, as you want to, if these proposed regulations are published in the Federal Register in April, we

are going to then have to be on the basis of confrontation, not on the basis of cooperation.

Mr. BERKLUND. Mr. Chairman, I think there would be very few areas of concern in there, but we would be happy—we just received your committee print—to now lay it out against regulations and meet with staff in order to identify any areas of concern.

Mr. MELCHER. Well, I might not have made myself clear, Curt. I don't think we can do that between now and April 1st, do you?

Mr. BERKLUND. Possibly not that soon, but—

Mr. MELCHER. Well, isn't that—when would you put these in the Federal Register?

Mr. BERKLUND. We would like to go with proposed rulemaking. That is just putting them out for public comment.

Mr. MELCHER. At what date?

Mr. BERKLUND. As soon as we can get them cleared. They are in the Secretary's office right now waiting a clearance for publication.

Mr. MELCHER. That is what I was wondering, when we are going to talk to the Secretary.

Mr. BERKLUND. We have made the recommendation to the Secretary and they are in the Secretary's office.

Mr. MELCHER. We will hear more about it next week when we talk to Assistant Secretary Horton. We did get into range improvement and I am not going to prolong this any longer, but surely we are going to have to have a common—a common denominator when we talk about range improvements and who recommends what, and as I view it, these advisory boards would want—some advisory boards dealing with range improvement would have to be in existence if we are going to get a dialogue between the people who are utilizing the leases and the permits and the people who are managing the public lands, whether it is BLM or Forest Service. So this is an area where we want as good guidance as you can provide us on how to establish that dialog, and we would like to set that as part of the law rather than just leave it to regulation.

Mr. BERKLUND. Hopefully our AMP's will be moving out and they will be identifying a lot of range improvement needs through the planning process, Mr. Chairman. And with public participation and the advisory boards' opportunity to review these, we think we will have full public participation, but when we get into the section of fees and distribution of funds, here I think probably we have more questions than we have answers at the present time because we are just trying to analyze it now.

Mr. MELCHER. Yes. I appreciate that.

Now, I have one or two further questions for you, Curt. Under the Taylor Grazing Act, either a Member of Congress or an employee of the BLM were prohibited from a lease or permit.

Mr. BERKLUND. Right.

Mr. MELCHER. Does that provision or other provisions of law apply to a Member of Congress or an employee of the Bureau of Land Management if his ownership or involvement with the lease or permit is through a corporation?

Mr. ROBISON. As you are aware, Mr. Chairman, the Solicitor of the Department has made a ruling with respect to ownership when a corporation is not involved.

Mr. MELCHER. No. I am not aware—oh, if the corporation is not involved. All right.

Mr. ROBISON. If the corporation is not involved.

Mr. MELCHER. I had seen that opinion, but I would like to—

Mr. ROBISON. I would think this would be a matter, of course, that would have to be referred to the Solicitor, but just addressing it as it would appear to me, it might well be that we would have to look at the corporation, itself, whether it is a closely held corporation or whether it is a corporation that deals in the open market where there are arm's-length transactions, that type of thing. If it is a family corporation, a closely held corporation, I don't think it would be any different than if the individual were involved, but if you are a stockholder in General Motors, that might be something different.

I do not speak authoritatively for the Solicitor, though, and I think the matter would have to be referred to him.

Mr. MELCHER. It isn't a point that you are prepared to answer on today.

Mr. ROBISON. No.

Mr. STEIGER. Mr. Chairman, I wonder if I could have unanimous consent that Mr. Berklund provide us with, and I don't want an in-depth operation, but a summary—provide us with a summary of the new available enforcement and management techniques that would be available to you under your new proposed rules which are not now available to you under either law or practice. Is that a big deal? If it is a big deal—you should know that it is going to be used against you.

Mr. BERKLUND. We have it prepared, but I don't know if it is in the depth you want. Could we supply that to you and see if—

Mr. STEIGER. I don't think it ought to be in depth. In other words, you are thinking—it would really be the justification of why you think you need the new rules. If it is available, if we could have it as soon as possible, it would be very helpful for us in examination of Assistant Secretary Horton. I would ask unanimous consent—

Mr. MELCHER. Is it possible to—

Mr. BERKLUND. We will supply it, sure.

Mr. MELCHER. Thank you very much. We appreciate your candid answers to our comments and questions. We know we will be continuing the dialog as we move along.

[The information follows:]

MAJOR CONSIDERATIONS FOR CHANGES IN THE GRAZING REGULATIONS

1. INTRODUCTION

In 1934 Congress passed the Taylor Grazing Act to regulate livestock grazing on the national resource lands (public lands), ending a 50-year period of competitive use of the range. Regulations were adopted to adjudicate livestock use allowances to qualified ranch operations and to designate grazing allotments. The objectives of these regulations were essentially accomplished by the mid-1960's. With changing times and with intensified use of the national resource lands by a variety of users, the old regulations have not only fulfilled their usefulness but have also become outdated.

For several years the Bureau of Land Management has been working on a draft of proposed regulations which would modernize livestock grazing administration under the Taylor Grazing Act. A number of important areas of change are being considered to meet the modern-day needs for more intensive manage-

ment of the national resource lands. Emphasis on the environment and considerations for other resource uses in the issuance of grazing permits need to be strengthened and incorporated into the regulations. Multiple use and environment are basic and viable objectives of the grazing management program as are sustained yield of forage and community and livestock operator stability.

The text of the proposed regulations is better organized and the language is less formal making them easier to read and to understand.

The objective of the proposed regulations is to improve administration of the NRL's to meet Departmental and BLM land management responsibilities. No changes would have to be made in the Taylor Grazing Act.

2. GRAZING ADMINISTRATION

The proposed regulations are intended to include grazing rules for all of the national resource lands, exclusive of Alaska, under the jurisdiction of BLM. They combine into one set the regulations applicable to Section 3 and Section 15 of the Taylor Grazing Act, the O&C western Oregon lands, and LU lands acquired under the Bankhead-Jones Act. All of these lands are similar in character and values and should receive equal management attention under standardized policies and regulations.

The regulations for Section 15 and Section 3 have been similar since the Section 15 regulations were changed in 1968. These proposed regulations bring the two together into one set of rules.

The proposed regulations would provide the policy to strengthen multiple-use management and provide a basis for intensive livestock management. These regulations would help stabilize existing grazing users and reduce administrative costs.

3. OBJECTIVES

The objectives of the present regulations have been to conserve and regulate the public grazing lands and to stabilize the livestock industry dependent upon them. The proposed regulations place emphasis on environmental considerations and intensive management to protect and properly manage the NRL's. This does not mean that the often predominant function of livestock grazing will be less prominent, but that means will be sought to accommodate other uses.

4. QUALIFICATIONS

There is no change from the requirements in the present regulations. To qualify for a grazing permit an applicant must be a citizen of the U.S. engaged in the livestock business. In addition, he must own or control land or water base in or near the NRL area which is used in support of his livestock operation.

5. PREFERENCE

Present regulations set forth the guidelines for adjudicating and allocating grazing use on the NRL's to qualified applicants (Sections 3 and 15). The regulations contain the guidelines for determining season of use, grazing capacity, class of livestock, for adjusting present use because of changes in available forage, and for issuing permits, licenses, and leases.

The proposed regulations would protect the interest of preferred grazing users. The allocation of preference and the issuance of grazing permits would be based on the grazing use on the NRL's which is recognized when the proposed regulations become effective. The preference would be based on District records of land dependent by use or prior water, adjudication, and the license, permit, and lease history.

6. ACCOUNTABILITY

Under the present regulations (Section 3), base property requirements are established for a State or District. They require that the permittee produce enough forage on his base land to support the livestock authorized on NRL's for a specified period (2, 3, 4 months, etc.). DPS records are maintained to record range and forage crop production on the private land, to assure that the base property is commensurate, and to show that the permittee has a year-round operation.

Under the proposed regulations, there would be no base property requirement and DPS records would not be necessary. A record of the permittee's preference

would be maintained through the use of applications, permits, billings, and transfers.

7. GRAZING AREAS

Under the proposed regulations the authorized officer would establish grazing areas to be allotted to a single permittee or a group of permittees. The grazing areas would be designated as:

1. Management allotments—established to be intensively managed under an AMP.
 2. Custodial grazing area or allotment—established where the NRL acreage contains limited resource values and/or where NRL acreage is small in comparison to the total area.
 3. Interim grazing areas or allotments—established pending designation as a custodial grazing area or allotment or a management allotment.
- Previously these areas had no formal designation.

8. PERMITS

Under the present regulations, licenses, permits, and leases are issued to authorize grazing on the NRL's.

Under the proposed regulations all grazing on NRL's will be authorized by a grazing permit. The permit will identify the allotted grazing area(s) and the amount of the NRL's forage to which the permittee is entitled.

Three kinds of grazing permits will be issued. Each, to varying degrees, sets out the conditions and manner in which livestock grazing use is to be authorized. Each is designed for a specific purpose and will reflect the intended category of permit.

Management permits will be issued for grazing areas which are under intensive management; they will be issued in conjunction with an AMP. They will be issued for a period of up to 10 years with provisions for renewal. They allow for the allocation to the operator of all additional livestock forage which becomes available within his allotment.

Custodial permits will be issued in grazing areas in which planning has been completed and where only limited resource values are involved. Generally, they will be issued for grazing use on fragmented NRL areas. These permits will be issued for up to 10 years with provision for renewal.

Regular permits will be issued in grazing areas in which resource planning has not been completed. They will be issued for a period of up to 10 years with provisions for renewal pending management considerations in the planning system. After planning, the allotments covered by regular permits will generally be scheduled for development of an AMP or designation as a custodial grazing area or allotment. These permits are not subject to any permanent increase in permitted use.

9 SPECIAL PERMITS

There is no substantial change in the regulations providing for special permits.

Free-use permits may be issued to an eligible individual for grazing on the NRL's adjacent to the individual's residence. The permit will authorize grazing use only for the domestic livestock owned and whose products or services are used directly and exclusively by the individual and his family.

Crossing permits may be issued to persons showing the necessity for crossing NRL's with livestock for proper and lawful purpose.

Exchange-of-use permits may be issued to any permittee or livestock operator having ownership or control of non-Federal land within his grazing area. They are issued for the grazing capacity of the non-Federal land at no charge.

Nonrenewable permits denote temporary use which carry no preference. Generally, such permits are issued for grazing above the active use preference provided such use does not interfere with existing operations and is in conformance with management objectives.

10. TRANSFERS

A preference is transferable. The present as well as the proposed regulations require that a transferee be qualified. Procedures for transferring a preference will be simplified. An operator may have as much base property to which the preference is attached as he desires. At the present time every variation of base

property exists and no modification in these are proposed. The proposed regulations will provide the latitude to make desired changes in land or water base. The base property offered will be recognized as long as it meets the regulatory requirements.

11. FEES AND CHARGES

No change in regular fees is proposed. The fees for each fee year will be published in the Federal Register. Fees will be charged on all grazing, crossing, and nonrenewable permits for the grazing of livestock on NRL's at a specified rate per animal unit month. The charges for any fee year will consist of a use fee and a range improvement fee and will not be less than \$10/permit.

The only changes from present procedures are:

1. Where a management permit has been issued, a fee notice based on actual use reported will be issued after the grazing season.
2. Except for actions initiated by the authorized officer, a service charge of \$25 will be made for each transfer of preference and for each supplemental or revised billing. Presently there is no charge for these actions.
3. Whenever the annual grazing use authorized exceeds the recognized preference, an added range improvement charge will be made. No such charges are made under the existing regulations.

12. TERMS AND CONDITIONS

In addition to the existing terms and conditions, the violation of which can result in penalty action, the proposed regulations provide that permits will be subject to modification or cancellation for:

1. Littering—(Land and Water Pollution)
2. Use of poisonous substances
3. Violation of Wildlife Laws (Bald Eagle Protection Act, Endangered Species Act, etc.)

Some of the existing terms and conditions are:

1. that all livestock authorized to graze the Federal range be branded or marked
2. that all range improvements placed on NRL's be authorized
3. that permittees not interfere with other lawful uses or users of the NRL's.

13. RANGE IMPROVEMENTS

The proposed regulations would provide for continuing the use of cooperative agreements and Section 4 permits to authorize the construction of range improvements on the NRL's. The proposed regulations would simplify the procedure for assigning range improvements to the transferee when there is a transfer of the preference. Unauthorized improvements would either have to be modified to acceptable specifications or removed. EAR's, or if necessary EIS's, will be prepared following multiple-use planning for all livestock management facilities and land treatment projects. The proposed regulations would strengthen design and construction standards.

14. UNAUTHORIZED LIVESTOCK USE

Under the proposed regulations it would no longer be necessary to determine if a trespass was wilful or nonwilful. Instead of using the \$2/\$4 trespass fee in connection with the wilful/nonwilful trespass, settlement due the U.S. as a result of unauthorized livestock use will consist of (1) a base charge of \$5 per head for cattle and horses and \$1 per head for sheep and goats, (2) cash rental value of forage consumed, and (3) costs arising from damage to the public land and property. The new regulations would provide for impoundment and sale of trespass livestock.

15. APPEALS AND HEARINGS

Regulations governing appeals and hearings are in Part 4 of 43 CFR and no change is proposed.

16. ADVISORY BOARDS

Regulations governing advisory boards have been removed from the grazing regulations and will be in Subpart 1784 of 43 CFR. Part of the new regulations

being implemented to meet the requirements of the Federal Advisory Committee. Act have been published as final rulemaking in the Federal Register on 1/21/75. The regulations providing guidelines for the establishment and composition of advisory boards were published as proposed rules in the Federal Register on 12/30/74.

17. LOCAL ASSOCIATIONS OF STOCKMEN

The draft regulations do not propose any change in these rules. They will, however, be removed from the grazing regulations and will be in Subpart 1787 of 43 CFR as the Departmental regulations are recoded.

Mr. BERKLUND. Thank you, Mr. Chairman, and we look forward to very close working relationships in the coming year.

Mr. STEIGER. Thank you very much.

Mr. MELCHER. The next witness will be John R. McGuire, Chief, Forest Service.

Chief McGuire, we are pleased to have you back with us again.

STATEMENT OF JOHN R. M'GUIRE, CHIEF, FOREST SERVICE, ACCOMPANIED BY ROBERT M. HOUSLEY, ASSOCIATE DEPUTY CHIEF FOR THE NATIONAL FOREST SYSTEM

Mr. MCGUIRE. Thank you, Mr. Chairman. With your permission, Ray Housley, our Associate Deputy Chief for the National Forest System, will join me here at the table.

Mr. MELCHER. Of course.

Mr. MCGUIRE. In the interest of time I can summarize my statement in just a few sentences if you wish.

Mr. MELCHER. That would be appreciated, chief. Without objection, Mr. McGuire's prepared testimony will be made a part of the record. Hearing no objection, so ordered.

Please proceed.

Mr. MCGUIRE. Since the preparation of this statement, we received a copy of subcommittee print No. 1. We have compared it to the bill referred to in our prepared statement. We find that our comments in the statement also apply to the subcommittee print.

The statement lists about a half dozen specific items. Our position on each of the items is generally stated in the last paragraph under the item.

About 1 year ago we testified before this committee in support of the legislation to provide organic authority for BLM. We again express our support of such legislation as proposed in the administration's bill. I think that is about all I need to say as an opening statement, Mr. Chairman.

Mr. MELCHER. Well, chief, you have been very patient and I know you have heard the dialog we have had with the BLM witnesses, and I am not sure whether you are objecting as they did to our using the term "10 years."

Mr. MCGUIRE. Our concern is, I suppose, a bureaucratic one. We would like a little more flexibility. Actually, as the statement points out, approximately 85 percent of the permits that we issue now are 10-year permits. About 90 percent in the West. But there are occasions when we would like to issue shorter permits, especially in the East. There may be times when there is some forage present on the land for brief periods and it could be used if we could issue a permit for a short term.

This might be, for example, when we have a new plantation of trees. There may be a period in the life of that stand when the forage would be utilized, but it wouldn't be 10 years long.

Mr. MELCHER. What specifically are you saying in the committee print that wouldn't permit the Secretary to do that?

Mr. McGUIRE. Well, as we understand it, we would have to issue a 10-year permit except under the two conditions listed in the print.

Mr. MELCHER. Well, we felt those sections clearly indicated that the discretionary authority of the Secretary for shorter permits is there.

Mr. McGUIRE. Perhaps we misinterpreted. We noticed the two conditions. Only one really applied to the national forests. The one referring to land disposal we felt did not particularly concern us, but the one talking about other uses would be the one I take it you are referring to.

Mr. MELCHER. Yes. That is what we thought anyway. But at any rate, I detected, after we got through talking with the Director and Associate Director of BLM, that about the only thing they were thinking differently than what the subcommittee had thought last year was on the express use of the words "10 years," or the term "10 years." The subcommittee was striving toward making the land available to the permittee or lessee if it was going to be continued in grazing and, of course, subject to following all the regulations. If that is what you have in mind, I don't see that we have much difference.

Mr. McGUIRE. Well, I think that is what we have in mind, Mr. Chairman.

Mr. STEIGER. Will the chairman yield?

Mr. MELCHER. Yes, I will be glad to.

Mr. STEIGER. I would like to call the chief's attention—if you have the committee print there, Chief—page 34. Line 9 and line 10 in (d), page 34. Really it was the committee's intention to address exactly the point that you say in which we say very clearly, "in whole or in part, pursuant to the terms or conditions thereof," referring to the lease. In other words, there is nothing in here to prevent you from writing a lease, an on-off lease that you can now lease or a lease that it may be—it may be a 10-year lease that says, "can only be used when forage is available at the discretion of the ranger." Obviously—I know that was the intent of the Chair and myself and it wasn't to reduce the management capabilities of either agency. It was, again, to encourage investment on the part of the permittee, very simply, and I wonder in light of that if you still would object even to the 10-year specification.

Mr. McGUIRE. If that is the case, then this language would authorize us to do what we are already doing, but in addition would direct us to do what we are now doing, you might say, voluntarily.

Mr. STEIGER. And frankly, give it the security as law as far as the financial institutions are concerned. That is—there is no subterfuge intended. That is exactly what the purpose is.

Mr. McGUIRE. I think we have a better understanding of it now.

Mr. MELCHER. Chief, if there are range improvements that are essential and are agreed upon by the—or offered by the permittee and

agreed to by the Forest Service, such things as improvements by building a dam or piping some water, underground piping of water, would it bother you if the bill stipulates that if the permit is canceled the person who has made an investment on a prorated basis would get his investment back?

Mr. McGUIRE. Yes, it would, Mr. Chairman. We are concerned about this direction—on page 34 that the permittee or lessee shall receive a reasonable compensation.

I think, in the first place, of course, this would somewhat limit our ability to devote the lands to a higher use, if that appeared to be desirable, because we would have to find the money to pay the compensation. But we are even more concerned about the implication that this privilege of the permittees could be interpreted as a property right. You know, there has been long debate about the definition of a grazing permit, whether it is a privilege or a property right, and I believe that is our basic fear, if this compensation requirement became law.

Mr. MELCHER. Well, if I am a prudent landlord and my renter says to me: "I would like to bury 2 miles of plastic pipe to take water where I can better utilize the range," if I have it there, I don't believe I would be very smart when that is over with, if I had to cancel his lease for some reason, to say you are going to have to dig up that pipe if you want it.

Mr. McGUIRE. That is right, and that is why we do not require a permittee to put the pipe in in the first place because of that very fact. Now, if we enter into an agreement, however, both parties need to be pretty clear that that investment can be amortized during the period of the permit, and we would be very slow to cancel the permit before the amortization period is over. But, on the other hand, we are afraid that if this is made a matter of law rather than voluntary arrangement, it will mature into some kind of property right, and this raises all of the old issues that have been around for years as to the rights of the users of the national forests.

Mr. MELCHER. Well, I fail to see much difference in whether the range improvement is burying plastic pipe or other structure or whether it is, as you point out in your testimony, a windmill, or some other property that could be removed from the land. I don't think that leads to any inherent right or property right.

Mr. SANTINI. Will the chairman yield?

Mr. MELCHER. Yes.

Mr. SANTINI. Chief, if it were determined by your legal advisors that this was merely a contractual right rather than an enhancement of a proprietary right in the property, a position that precedent would strongly endorse, would that then eliminate your objection to this particular clause or would your first observation with regard to limiting the ability to devote the land to higher use still persuade you to object to that clause?

Mr. McGUIRE. I think we would still have objections. We have other occupancies that would be affected, you see, by this precedent, summer homes, for example, and other sorts of developments placed on the land under permit. So I could see that we might get ourselves into a less flexible position where we would always have to figure where we would get the money if we wanted to make a change.

Mr. SANTINI. I think that is a worthwhile inquiry and I, too, would be somewhat concerned about the scope of the language and its application to other users.

Mr. McGUIRE. This would be sort of a precedent and would give other users rationale for seeking similar rights, I believe.

Mr. SANTINI. Well, it would seem that as the gentleman from Arizona suggested, the language on page 34 confines rather explicitly the application of this provision to grazing.

Mr. McGUIRE. That is true, but if enacted, it would, as I say, give a rationale to other users to seek similar legislative assignment of some kind of rights to compensation. I am not saying that you would give it to them, but it at least gives them reason to seek some sort of compensation here.

Mr. SANTINI. Would you be able to provide through your counsel your position with regard to the legal rights at issue as it affects proprietary versus contractual interests created by the reimbursement provision?

Mr. McGUIRE. We will be glad to do that.

Mr. SANTINI. Thank you.

[The information follows in letter dated May 6, 1975:]

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
May 6, 1975.

HON. JOHN MELCHER,
Chairman, Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, House of Representatives.

DEAR MR. CHAIRMAN: At the Subcommittee's March 21, 1975, hearing on grazing provisions for the proposed "Public Land Policy and Management Act of 1975," Congressman James Santini asked Chief John McGuire if he would provide through counsel our position as to whether the compensation provisions of section 211(e) of Subcommittee Print No. 1, dated March 18, 1975, creates a contractual right or some proprietary interest in the permitted grazing use of National Forest System lands.

Section 211(e) provides that whenever a permit or lease for grazing domestic livestock is cancelled in whole or in part in order to devote the lands covered by that permit or lease to another public purpose, including disposal, the permittee or lessee will receive a reasonable compensation from the United States for the loss of any interest in an authorized permanent improvement placed or constructed on the lands covered by such permit or lease by the permittee or lessee. The compensation for such improvements shall not exceed the fair market value of the terminated portion of the permittee's or lessee's interest in the improvements.

The Department of Agriculture's Office of General Counsel has reviewed section 211(e) in response to Congressman Santini's request. In their view, the compensation granted upon termination of the grazing permit, according to the provisions of section 211(e) of the proposed bill, would be a statutory right created independently of traditional property or contract law, although it is more closely akin to the latter. They advise that the statutory provision would create a specific compensatory right not unlike a reimbursement obligation which could be created between parties to a contract. They do not construe the language of section 211(e) to grant to the permittee or lessee any proprietary interest in the public lands of the United States.

This information is provided for the Committee's file. We are also informing Congressman Santini of the views of the Office of General Counsel by separate letter.

Sincerely,

JOHN R. McGUIRE,
Chief.

Mr. MELCHER. The gentleman from Colorado.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. McGuire, I am so new to this I don't understand really what your concern is in this respect. When you issue a permit for somebody to build a home out there, you, in effect, let them keep that home. You are not going to take it away from them year in and year out. At least you haven't in my district. They talk about increased tax base and that sort of thing, but as a practical matter I don't care whether you call it a property right or not, it is a quasi-property right. You might say you are going to take it away from them, but you have not been doing it.

What is your concern about this? The last witness, Mr. Turcott, threatened—I thought it was a very explicit threat—that if we came along with something like a 10-year program that, he said, well, we are just going to make the conditions so tough that it is really going to almost vitiate the effectiveness of the 10-year program. That kind of raises the hackles, you know, when you just walk in here the first day and hear that kind of thing. What is it that bothers you so much, recognizing that when you give somebody the right of improvement on the land that they don't have an interest in it, because they do have an interest in it, even now.

Mr. McGuire. Well, I am not an attorney, Mr. Johnson, but as I say, our concern is that we might give away some of the public property in some fashion, in a way that we will later regret. The Forest Service has been around since 1905 and there have been thousands and thousands of demands for special rights of use and occupancy. We have been defending against them over the years saying that use and occupancy of public property is a privilege, not a property right.

Mr. JOHNSON. Yes, I understand.

Mr. McGuire. I grant all the things you say, that we let a person build a summer home, or put up a ski tow, or build a fence, or erect a windmill, or what have you. We almost always have some good understanding with the permittee as to his position, as to his risks, as to how long he is likely to be there, as to what our future intentions might be. But we still would like to reserve the authority to discontinue that use if the need should arise.

Now, it arises very seldom. I can't think of an instance offhand.

Mr. JOHNSON of Colorado. You have that authority as I understand it, quite clearly.

Mr. McGuire. But not with compensation, you see. Not to compensate them.

Mr. CLAUSEN. Will the gentleman yield?

Mr. JOHNSON of Colorado. Yes.

Mr. CLAUSEN. Mr. McGuire, I would like to continue the line of questioning that was started by Mr. Santini and followed along by Mr. Johnson. Let me ask you what the difference is between an interest in these grazing rights in contrast with what we have in California where there is a possessory interest, that is, where an individual has a lease on Forest Service land and the county assessor has an assessment on that possessory interest.

Now, isn't this, to a degree, similar to this, what in effect, I will describe for lack of a better way of describing it as a possessory

interest in the grazing rights for contiguous lands? Is that what you are referring to, Mr. Santini?

Mr. SANTINI. Yes. In fact—

Mr. CLAUSEN. How does it differ?

Mr. McGUIRE. Well, I think it is quite similar. The difference mainly is that the possession of a grazing permit tends to have a value in ranch transactions. Now, when a ranch is sold, if there is a permit associated with the private based property, the property value is likely to be higher than if there is no permit. So the value of the permit appears in the value of the base property, whereas in the situation you mentioned, where the land is entirely in public ownership and the improvements are entirely in private ownership, there is no private based property, so to speak, that an assessor is looking at, except what sits on public land.

Mr. CLAUSEN. As I see the basic thrust of the language, it is to recognize that by virtue of the fact that they do have a permit, there is a degree of possessory interest involved here and I think the committee's language is attempting to address itself to that, is it not? I will ask that of the Chair.

Mr. MELCHER. That is true.

Mr. CLAUSEN. There is a variable and a significant variable between real property on leased land as opposed to permit on grazing lands. I think, if I could go one step further, I believe with the nodding of heads of my colleagues who are from Western States, I rather gather that this situation is indeed, a factor, and it is in place in our respective areas. For that matter, is it not true that oftentimes lending institutions take this into consideration when they are dealing with a specific individual?

Mr. MELCHER. Well, I would say that it is true, that lending institutions do view it that way.

Mr. CLAUSEN. So, I would imagine what we would have to do is to address ourselves to what is fair and equitable to the private individual involved, and then obviously the public interest at large.

Mr. MELCHER. Correct.

Mr. JOHNSON of Colorado. Could I ask another question along this line, Mr. Chairman?

Mr. MELCHER. The gentleman is recognized.

Mr. JOHNSON of Colorado. Let's say the Aspen Ski Corp., which has millions of dollars invested, you renew their lease every year or every 3 years, whatever the term is.

Mr. McGUIRE. No. The typical winter sports resort has two kinds of permits. By law, long-term permits cannot be issued on more than 80 acres of land. So if some of the base property, for example, the base of the ski tow, is on Federal land, we can issue a permit up to 30 years, but there is the 80-acre limitation. That is what makes it different from these permits for grazing.

The permits for the rest of the winter sports operation are terminable permits which are reviewed on an annual basis. This would be the ski runs themselves and they go year to year and can be no longer, and there is no acreage limitation prescribed by law for such permits.

Mr. JOHNSON of Colorado. You wouldn't revoke the lease on the ski area if it meant that the long-term investment was going to be

vitiated. Nobody would go up there if they weren't going to be able to ski anyway. So it seems to me the practicalities indicate that if you have a big investment it is obviously not going to be revoked. If you have a small one, then you might not get it back. Is that equitable?

Mr. McGUIRE. Well, the big investments in winter sports developments are mostly on private land. They are usually in the valleys. The Government owns the slopes. The investments that are more costly usually are covered by permits with the 80-acre limitation and run for 30 years. Both parties are in pretty good agreement that these investments can be amortized during that period. Otherwise, we are reluctant to let them put in heavy investment that cannot be amortized in the period of the permit. The rest of the investment is mainly clearing of slopes for ski runs and this sort of thing, and the annual permit seems to be sufficient for that.

Mr. JOHNSON of Colorado. Thank you.

Mr. MELCHER. The gentleman from Nevada.

Mr. SANTINI. Thank you, Mr. Chairman.

Mr. McGuire, may I address two points that were the topic of some inquiry with the prior witnesses.

No. 1, I gather from your experience of 85 percent of the permits being issued for 10 years and 90 percent in the West, that at least within the Forest Service's experience these 10-year leases have been a favorable experience?

Mr. McGUIRE. Yes, sir. Ten-year permits have worked quite well.

Mr. SANTINI. Would you care to elaborate?

Mr. McGUIRE. Well, we, of course, are committed to the idea that livestock grazing is one of the important multiple uses of the national forests. We are committed to the idea of cooperation between the rancher and the Government in the development of the grazing resource. We recognize that the rancher needs more than just year-to-year security in order to invest in improvements or to share in investment. Frequently it is a 50-50 sort of thing where, for example, in fence building, we furnish the materials and the rancher puts up the fence. So we think it has worked very well.

Mr. SANTINI. And, No. 2, I gather from your statement included by specific reference, bottom of page 8, top of page 9, that similarly your experience with the grazing advisory boards has been a favorable one, and one that you intend to continue?

Mr. McGUIRE. Yes, sir. It has been. I listened to the testimony of the Interior witnesses. We take a somewhat different approach. We think that the public must be involved in the management of the public lands, and there are different ways of obtaining that involvement. Advisory boards or committees are one way. Public meetings are another. Circulation of plans and programs, third. Of course, we try to get the press and other media to help us disseminate proposals. So there is no one perfect way in our view to get this advice, this public involvement. We think both BLM and Forest Service need to continue experimenting with other ways to see if we can improve the whole approach to interesting the public in what we are doing.

Now, the grazing advisory boards have been working well for us. We have not found a good substitute for them. We do have multiple

use advisory committees and they represent a different segment of the public. Sometimes these advisory committees work better if they are on a regional or national basis.

For example, in the Colorado forests, many issues are of great interest to people who live in Denver who might not be easily attracted to an advisory committee, but they might participate in public meetings that we hold in the city to discuss some issue. But grazing, on the other hand, is a case where we want to get together all of the permittees in an area where they have mutual problems and get them to talk to us about solutions to mutual problems strictly on grazing.

Mr. SANTINI. I don't want to invite you into necessarily an issue of controversy or to a delicate area of confrontation with other departments, but I have been impressed almost from the inception of my limited inquiry into this realm of the fact that the Forest Service seems to have succeeded where BLM has failed in its coordination with the multiple users of land, and specifically with the grazers, and why is that?

Mr. McGUIRE. Well, the BLM lands are in quite a different situation than the national forests. The national forests have been set up as units of land for a longer time. We have people in place in the forest areas to a greater extent than BLM and we have an organic act.

Mr. CLAUSEN. Will the gentleman yield?

Mr. SANTINI. Yes.

Mr. CLAUSEN. I think in all fairness it has to be stated that certainly the Forest Service has had more time and more experience with the land management philosophy included in—as Mr. McGuire says—the original organic act. Up until recently, you know, the BLM has been for all practical purposes a disposal agency until we moved in the direction of revising that away from disposal towards that of a management agency, which was more reflective of the name. I can't imagine the Bureau of Land Management being anything other than a management agency. I think as the Chair and the other members of the committee will remember, one of the early breakthroughs on this occurred when we established the King Range National Conservation Area out in our district where we for the first time permitted the BLM to commit themselves to a philosophy in multiple-use land management wherein they could classify a management area consistent with its best use. I think that explains part of it. Would you agree with that?

Mr. McGUIRE. That is certainly true, and the public is more aware of these designated areas such as the King Range, for example, than they are of just grazing acreage as you find in parts of Nevada that don't seem to have a unit designation.

Mr. SANTINI. Thank you, Mr. Chairman.

Mr. MELCHER. The gentleman from Oregon.

Mr. WEAVER. I will defer questioning, Mr. Chairman, due to the time.

Mr. MELCHER. Mr. McGuire, when you talk about the fee itself, are you advocating that the fee be maintained at \$1.11?

Mr. McGUIRE. No, sir. We think the fee should go to fair market value.

Mr. MELCHER. Well, but when?

Mr. McGUIRE. We set up a 10-year schedule to reach the fair market value, as you know.

Mr. MELCHER. You mean by 1985 we reach it?

Mr. McGUIRE. Our original target date was 1978 and is now 1980.

Mr. MELCHER. Well, then, do you want to reach fair market value by 1980?

Mr. McGUIRE. Well, we have had two full moratoria and one partial moratorium on increases so far and I believe we will still hit fair market value in 1980.

Mr. MELCHER. 1980, and what would be the grazing fee then?

Mr. McGUIRE. The grazing fee in 1980 under the present system would be \$1.23 plus an increment for inflation.

Mr. MELCHER. Well, I don't suppose you can project those increments, but can you give us an idea?

Mr. McGUIRE. The private land index which is used to indicate inflationary prices has gone from \$3.47 in 1966 to \$5.82 in 1975. So that would be about a 50, 60 percent increase in 8 years. Another 5 years, I would estimate another 35, 40 percent, if it continues at that rate.

Mr. MELCHER. You mean then—you increase the calculated fair market value in 1975 from \$1.96 under the current procedures to \$2.03 under the proposed procedures.

Now, I am not sure from your testimony whether you think a fair market value for 1975 is somewhere between \$1.96 and \$2.03 or whether you think in 1975, the current year, the fair market value in the appropriate place for Forest Service grazing fees per AUM would be \$1.25 or \$1.32 or whatever you had in mind. Your testimony confuses me because I don't know what you mean here on page 6.

Mr. McGUIRE. Well, our preference is in the last paragraph on page 6 and all we are saying there is that, sure, \$2 is approximately what fair market value is now, and if you continue to have a statutory floor of \$2, it might be all right.

Mr. MELCHER. Yes.

Mr. McGUIRE. But there could be times when we would want to go below \$2 and we would like to retain the flexibility to go that way.

Mr. MELCHER. Well, I understand that, but you think \$2 is about fair market value now?

Mr. McGUIRE. Yes, sir.

Mr. MELCHER. But you are not going to charge that for 1975 permits.

Mr. McGUIRE. That is correct.

Mr. MELCHER. So maybe there is a reason for putting it into law rather than leaving it to the discretion of the Secretary.

Mr. McGUIRE. But if you do, we would like to—

Mr. MELCHER. Have it go down.

Mr. McGUIRE. We may have to come back at some time and say \$2 is too much.

Mr. MELCHER. You would rather have a formula so it can go down.

Mr. McGUIRE. That is correct.

Mr. MELCHER. Something to do with the cost of doing business and price of cattle.

Mr. MCGUIRE. And the comparable cost of grazing on private lands.

Mr. STEIGER. Mr. Chairman——

Mr. MELCHER. The gentleman from Arizona.

Mr. STEIGER. I would just like the record to reflect at this point that given the present state of the cattle market it is entirely conceivable that the \$1.11, if you used the combined index of the grasslands value and the price of cattle, \$1.11 could well be too high because the grasslands price as I am sure you are aware is also declining now under great pressure, and so all I can say to the Chair, I hope we stay with the concept of what it is that we are going to do after we set the base price and, of course, I think the up or down has never been better justified than the present market conditions.

I thank the Chair.

Mr. MELCHER. I thank the gentleman. Thank you very much, Chief McGuire.

Mr. CLAUSEN. Mr. Chairman, I would like to ask unanimous consent that I be permitted to place a statement in the record on this point and also to include extraneous material. What I had in mind, Mr. Chairman, is, as you know, I mentioned to you informally that the late Jerry Pettis had a great interest in the California desert conservation area, and was working very closely with you in an attempt to advance that section into the Organic Act and incorporate it into law. Recently his wife, Mrs. Shirley Pettis, came back here to me asking for an indication of the progress of the legislation. I stated that we were in the process of holding hearings and that the chairman had scheduled hearings which are now being held here today. She expressed her strong interest in this, and I am sure, Mr. Chairman, she would like to submit to you a letter indicating continuing interest on her part as a follow-on to the efforts of her husband, Jerry Pettis.

Mr. MELCHER. Without objection, the gentleman from California's request will be accepted and it will become part of the record at this point.

I would also like to place in the record immediately following, a letter from Congressman Norman Y. Mineta, California, dated March 12, 1975.

[The material referred to follows:]

MARCH 21, 1975.

HON. JOHN MELCHER,

*Chairman, Public Lands Subcommittee, Interior and Insular Affairs Committee,
Longworth House Office Building, Washington, D.C.*

DEAR CHAIRMAN MELCHER: As you know, during my most recent stay in Washington, I discussed the progress of the California Desert Conservation area legislation with Congressman Don Clausen of your Committee and with other Members of Congress. You were most gracious and cooperative. Mr. Chairman, in your relationship with my late husband as he attempted to establish and protect this invaluable area. You undoubtedly know that over 40 Members from throughout the nation joined Jerry in this effort, and I am delighted that your Committee is now considering the matter as part of your hearings on the Organic Act, Title IV of which will establish a California Desert Conservation Area.

Although many people consider it only a barren wasteland, in the past 25 years the California Desert has become a recreation area for millions, a source of livelihood for many and a home for others. Having held hearings in the 37th Congressional District last year, you know the wide range of uses made

of the desert, the fragility of the ecology and the historic and archeological relics it contains.

Time is running out for the California Desert. Last December about 3,000 people participated in a motorcycle race over a 168 mile course near near Barstow. We cannot yet completely assess the damage this race caused, but we are all aware of some of the disastrous results. The race clearly demonstrated the need to establish a multiple-use plan to allow the most judicious management and conservation of all desert resources.

Lacking sufficient manpower, resources, and authority, the Bureau of Land Management cannot do an effective job of protecting this irreplaceable area. I think it is especially important that the B.L.M. have enough personnel to carry out its role of providing information to the thousands of visitors to the Desert each year. Last October 26th, the first of ten B.L.M. Way Stations in the desert was opened. This Barstow Way Station has most impressive facilities. It provides a means of communication between the managers and the users of the national resource lands. It provides information on the various uses of the desert: camping, off-road vehicles, rockhounding and sightseeing.

Mr. Chairman, the desert contains not just flora and fauna and conservation and recreation areas, it has one of the largest and richest concentrations of pre-historic art in the world, Indian rock carvings, known as petroglyphs. Some of them are thought to be at least 5,000 years old. These carvings are being carried away by souvenir hunters and obliterated by vandals using cans of spray paint. As my late husband used to say, "The destruction of the petroglyphs is analogous to the plundering of the Egyptian pyramids by grave robbers.

Again, Mr. Chairman, my sincere appreciation to you and the committee for your invaluable efforts not only on behalf of the people of the 37th District, but for all Americans who will use and enjoy the California Desert Conservation Area in the years to come.

Sincerely yours,

SHIRLEY N. PETTIS.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES.
Washington, D.C., March 12, 1975.

HON. JOHN MELCHER,
Chairman, Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for providing me with the opportunity to speak in behalf of H.R. 3038, the California Desert Protection Act which has been referred to your Subcommittee.

I have joined our good friend and late Colleague, the Honorable Jerry L. Pettis, in cosponsoring this bill since I believe, as did he, that the California Desert is a part of this country's historical heritage and, as such, should be preserved and protected from the disregard of vandals and profiteers.

Indian rock carvings known as petroglyphs, exist in the Desert in rich concentration, a wealth of prehistoric art, some of which are estimated to be 5,000 years old. Vandals and souvenir hunters presently are destroying this treasure by etching them with spray paint and using them for target practice. More significantly, the Bureau of Land Management predicts that 80% of the carvings will be lost in fifteen years due to their removal and sale as decorative pieces.

Presently the Bureau of Land Management is ill equipped to do an effective job in protecting the Desert. Circumstances as they now exist require the BLM to control the 15.6 million-acre desert with only a \$923,000 annual budget. This bill, H.R. 3038 would establish a multifaceted program which would encourage the most judicious use and management of the Desert. The requirement of public hearings in the formation and regulation of the conservation area represents an important step, by involving the public in what otherwise has been a wholly bureaucratic decision-making process.

Additionally, the bill will correct the present inadequacies of the Bureau of Land Management's administration by providing sufficient manpower, resources and authority necessary to secure the protection of the petroglyphs and the desert environment generally.

Once again I am pleased to have had this opportunity to address your Subcommittee, Mr. Chairman, on this important matter. I urge your immediate consideration.

Very truly yours,

NORMAN Y. MINETA,
Member of Congress.

Mr. MELCHER. I might say for the record that title IV of the committee print is specifically the California designate.

Mr. CLAUSEN. I will relay that information to her.

Mr. MELCHER. Thank you.

[The full printed statement of Mr. McGuire follows:]

STATEMENT OF JOHN R. MCGUIRE, CHIEF, FOREST SERVICE, DEPARTMENT
OF AGRICULTURE

Mr. Chairman and Members of the Committee: Thank you for this opportunity to discuss the grazing programs on National Forest System lands. We understand that you would like to have us discuss present grazing authorities and policies as they compare to grazing provisions as contained in the proposed "Public Land Policy and Management Act of 1974" which the Committee was developing in the 93rd Congress. I will limit my remarks to the effect of such provisions if applied to the National Forest System, deferring to the Department of the Interior for any comparison of their authority and policies.

Grazing of commercial livestock on National Forest System lands dates back to before National Forests were established. grazing continues to be a major use of these lands. Of the 187 million acres in the National Forest System approximately 105 million acres are subject to grazing. This grazing involves 16,000 permittees. In 1974 a total of 1.5 million cattle and 1.6 million sheep grazed on National Forest System lands for a total of 7.2 million animal unit months of grazing. Much of the grazing on National Forest System land is seasonal with permittees grazing stock for part of the year on public lands and the balance of the year on adjacent private lands.

The basic authority for permitting grazing use on the National Forests emanates from the Organic Administration Act of June 4, 1897, and basic authority for permitting grazing use on the National Grasslands emanates from the Bankhead-Jones Farm Tenant Act of July 22, 1937. The Granger-Thye Act of April 24, 1950, supplements those authorities by providing that the Secretary of Agriculture may, upon such terms and conditions as he may deem proper, issue permits for the grazing of livestock for periods not exceeding ten years and renewals thereof. The Multiple Use-Sustained Yield Act of June 12, 1960, affirms that the National Forests are established and shall be administered for multiple purposes, including range purposes.

DURATION OF GRAZING PERMITS

Pursuant to the Act of April 24, 1950, the Forest Service issues grazing permits on either an annual basis or for a term of 10 years. Nationally, approximately 85 percent of the grazing is now administered under 10-year term permits. In the West the amount is in excess of 90 percent. These permits are normally renewed for subsequent 10-year terms. The term permit applies to ranges where a long-term commitment to grazing is appropriate. On other ranges, grazing is authorized under temporary permits on an annual basis and these may be extended or reissued where appropriate. Temporary permits are common on eastern National Forests and in other areas where grazing occurs on transitory ranges. Also, in the East, we find that grazing can often be effectively handled through short-term permits, because permittees in the East often have a greater management flexibility and a larger number of feed sources than usually occurs in the West.

The provisions on duration of grazing permits as contained in the legislation permits be issued for periods of 10 years, except shorter permits could be granted where land is pending disposal or will be devoted to a public purpose prior to the end of the 10-year term.

To facilitate our efforts to balance grazing with the available range resource, and to coordinate grazing with other resource uses, we believe it is important that we continue to have authority that provides flexibility in determining the duration of grazing permits. This includes flexibility to issue a term or temporary permit to fit a broader range of situations than provided for by the proposed legislation. Another concern is that the wording of the proposed legislation implies that land disposal is an inherent policy and that grazing lands are not considered as lands devoted to public purposes. Both implications are inconsistent with the purpose for which National Forests are established and maintained.

RENEWAL OF GRAZING PERMITS

As a matter of policy and regulation, permits are renewable based on the continued availability of the forage resource. The season of use and number of livestock permitted on an allotment may be adjusted annually. Regulations of the Secretary of Agriculture provide that term permits are renewable at the end of each term period provided the provisions and requirements under which they are issued continue to be met and as long as it is in the public interest to renew them.

The provisions on renewal of grazing permits as contained in the legislation proposed in the 93d Congress, would guarantee the renewal of a permit if the following conditions were met: (1) the lands remain available for grazing, and (2) the permittee has complied with the Secretary's regulations and terms of the permit.

By guaranteeing renewal if certain conditions are met, the proposed legislation departs from all other authorities relating to the occupancy and use of National Forest System lands. The proposed legislation also places limitations on the discretion of the Secretary in determining whether it would be in the public interest to renew a permit.

CANCELLATION OF GRAZING PERMITS AND PERMITTEE COMPENSATION IN THE EVENT OF CANCELLATION

Although the Secretary has the authority to revoke or suspend a permit at any time if a determination is made that this would be in the public interest, such actions are very rare.

Range improvements on National Forest and Grassland allotments are normally constructed cooperatively with the permittee and Forest Service sharing the cost. Permanent improvements such as earthdams or stock trails are considered part of the land on which they are located and are considered the property of the Government. However, the calculation of grazing fees reflects that the permanent improvements are considered the property of the government and cannot be removed after the term of the permit. Other improvements such as fences or windmills which could be moved may be either Government owned or permittee owned depending on how they were constructed. Title to improvements is vested in the Government where any part of the construction cost is borne by the Government. In the event that a permit is not renewed or is evoked or suspended within its term, the permittee may remove temporary improvements in his ownership. Under the terms of the permit he is not entitled to compensation for any improvements, or to any other compensation. *

Provisions contained in the legislation proposed in the 93rd Congress require that a permittee receive compensation in the event a permit is cancelled to devote the lands to another public purpose. Such compensation would be for any authorized permanent improvement placed or constructed on Federal lands by the permittee.

We believe that it is important that the Federal Government not be placed in the position of having to compensate permittees for range improvements. We are also greatly concerned that the legislation, where it reads "permittee's interest therein," could be interpreted to also compensate the permittee for "permit value." Such obligations would limit the administering Federal agency in its ability to devote the lands to a higher public use or uses. The provisions under consideration in the 93rd Congress concerning compensation and permit renewal could also convert a grazing permit into a property right. This would seriously alter the existing relationships between the United

States and the permittees. Historically, the use of land owned by the United States and administered by the Forest Service has been considered a privilege and not a right. This position has been upheld by the courts.

GRAZING FEES

The present fee schedule for grazing use is developed in accordance with regulations prescribed by the Secretary of Agriculture in common with regulations prescribed by the Secretary of the Interior and in accord with Government-wide principles of charges for use of public resources. The present fee schedule was developed in the 1960's as a result of an extensive interdepartmental study and public participation. The study was premised on congressional direction that fees be uniform for all agencies and represent fair-market value for western National Forests and public lands administered by the Bureau of Land Management in the western States. An incremental schedule was developed to bring existing grazing fees up to fair-market value. The 1966 base rate of \$1.23 is also subject to an annual adjustment based on the index of private grazing land lease rates for the 11 western States. Grazing fees will reach fair-market value in 1980 based on the incremental schedule. In 1974 the National Forest average fee was \$1.11. The increase in 1975 was postponed because of general economic conditions in the livestock industry.

The legislation proposed in the 93rd Congress would have created a statutory requirement that fees be computed in accordance with the current formula as modified by the addition of an index of prices received for beef cattle. It would also require that in no event would a fee be set at less than \$2 per animal unit month of grazing.

We prefer that the present grazing fee adjustments be allowed to continue, bringing the grazing fees to fair market value by 1980. Shifting from the present index of private grazing land lease rates to a proposed combined index of prices received for beef cattle and the private grazing land lease rate would increase the calculated fair market value for 1975 from \$1.96 under the current formula to \$2.03 under the proposed procedures. Implementation of the proposed procedures in 1975 would have increased the average National Forest grazing fee from \$1.11 to \$2.03, an increase of 83% in fees. We believe the administering agencies should retain the authority to establish the method for computing grazing fees. We believe this affords greater opportunity to accommodate unforeseen developments that affect the economic condition of the livestock industry.

SEPARATE ACCOUNTS FOR RANGE IMPROVEMENTS

The Act of April 24, 1950, provides that amounts equivalent to 2 cents per animal-month for sheep and goats and 10 cents per animal-month for other kinds of livestock under permit may be appropriated for certain range improvements from monies received from grazing on the National Forest. This emphasis on range improvements is not tied to a special account or fund.

A provision of the legislation proposal in the 93rd Congress would have credited 50 percent of all monies received as fees for domestic livestock grazing into a special account as a range improvement fund.

If grazing fees were set at the proposed \$2.00 per animal unit month, 50 percent of the fees from National Forest System lands would be approximately \$7.2 million. Although the proposal states that monies appropriated from the fund would be in addition to regular appropriations, this is not likely to occur. Grazing receipts now go into the General Fund of the Treasury. Establishment of the range improvement fund would not change the total revenues available to the Federal Government, nor the demands that are made on these revenues. The improvement fund represents an "ear-marking" approach to funding which limits overall Federal priority setting and budget flexibility. Earmarking of funds decreases the amount initially available for all national programs and can impede the careful and objective balancing of the many worthy public projects. We prefer that the present approach of seeking range management funds as part of our regular appropriations process be continued.

National Forest allotments contain more than 60,000 miles of range fences. However, the condition and extent of both boundary and internal fences varies widely. There is also a wide variety in the nature and extent of other

range improvements such as water development and vegetative improvement. The current Forest Service budget provides \$17.9 million for range management of which \$8 to \$10 million will be used for range improvements. Our budget request for 1976 is \$18.4 million. We recognize that there are opportunities to increase grazing capacities with more intensive range management and that this intensified management would require the construction of additional improvements.

GRAZING ADVISORY BOARDS

Another feature of the proposed legislation of the 93rd Congress pertained to Grazing District Advisory Boards. This provision was applicable to Bureau of Land Management administered lands and related boards; however, I would like to briefly summarize the status of National Forest Advisory Boards.

National Forest Grazing Advisory Boards have been in existence for many years and in 1950 were specifically authorized under the Granger-Thye Act. Grazing boards must now be established by the Secretary of Agriculture under the Federal Advisory Committee Act. Separate charters will be prepared for each of the fifty-four Grazing Advisory Boards. The purpose of Grazing Advisory Boards is to provide National Forest System grazing permittees within a designated area a means for expressing their recommendations concerning grazing management and administration. In order to obtain equitable representation of all grazing permittees, the Board members will be elected by the grazing permittees in the area for which the Board is established. We believe the Grazing Advisory Boards created under the Federal Advisory Committee Act can and will function as well as earlier Boards created under the Act of April 24, 1950.

IN CONCLUSION

About one year ago, we testified before this Committee in support of legislation to provide organic authority for the Bureau of Land Management. We again express our support of such legislation. The Administration's proposal for an organic act has been transmitted to the Congress. It does not, however, include any revision of grazing authorities. We believe that present grazing authorities are sound. We do not recommend that legislation affecting National Forest System grazing authorities be included in the organic act.

This concludes my prepared statement. I will be happy to answer questions.

Mr. MELCHER. The subcommittee will stand adjourned until Monday morning next, March 24, 10 a.m.

[Whereupon, at 12:15 p.m., the subcommittee recessed to reconvene at 10 a.m. on Monday, March 24, 1975.]

PUBLIC LAND POLICY AND MANAGEMENT ACT OF 1975

MONDAY, MARCH 24, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC LANDS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m. in room 1302, Longworth House Office Building. Hon. John Melcher presiding.

Mr. MELCHER. The subcommittee will come to order.

This is the second day in this Congress for holding public hearings on the Public Land Policy and Management Act of 1975. We are working from Subcommittee Print No. 1, which is dated March 18, 1975. I wonder if we have before the subcommittee—has the bill introduced by Congressman Ruppe at the request of the administration been referred to this subcommittee yet?

Mr. SHAFER. It has not come back from the printing office yet, Mr. Chairman.

Mr. MELCHER. I am getting some letters on a bill that I do not recognize. The writers believe that the bill has been referred to this subcommittee. Have we gotten anything that might have been introduced by Congressman Udall?

Mr. SHAFER. I understand he is working on a bill, but it has not been introduced as yet.

Mr. MELCHER. He mentioned it to me about 2 weeks ago, that he is thinking about introducing a bill on the subject, and I have not heard yet whether it has been. So, we are just working off our Subcommittee Print No. 1 so far. Our first witness today will be Mr. John Weber, Public Lands Council; and he is accompanied by Mr. D. G. Freed, American National Cattlemen's Association. Mr. Weber and Mr. Freed, welcome to the committee.

How are we starting here? Am I to assume that this is a joint presentation? It is, is it not?

Mr. WEBER. That is right, with the Public Land Council and the American National Cattlemen's and the American National Wool Grower's Associations.

Mr. MELCHER. Combined with the wool growers?

Mr. WEBER. Right.

Mr. MELCHER. We have a three-in-one statement. Please proceed.

STATEMENT OF JOHN WEBER, PUBLIC LANDS COUNCIL, ACCOMPANIED BY D. G. FREED, AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION; AND THOMAS CAVANAUGH, PUBLIC LANDS COUNCIL

Mr. WEBER. Mr. Chairman, Mr. Melcher, my name is John Weber. I am a livestock operator from California, and I presently represent the chairman of the Public Lands Council, which is public land users from the Western States. Mr. Freed is with me from the National Cattlemen's Association, and Thomas Cavanaugh from the Public Lands Council in Washington.

Mr. Chairman, this statement is made on behalf of the Public Lands Council, a voluntary organization of livestock operators who hold permits and leases to graze livestock on the public lands, the American National Cattlemen's Association, and the National Wool Growers' Association.

We are pleased to note that Subcommittee Print No. 1 of the proposed Natural Resource Lands Management Act of 1975 is much more comprehensive than other measures pending before the subcommittee which purport to establish new policy for the management of lands under the jurisdiction of the Bureau of Land Management. It has always been our position that such legislation should limit, rather than extend, the discretionary authority of the Secretary of the Interior by providing more precise congressional guidelines for public land management.

This bill would, for example, provide guidelines for public land withdrawals and limit the Secretary's authority to make such withdrawals. On a number of occasions in the past, we have suggested just such limitations on that authority. The bill would also limit the Secretary's authority to expend Federal moneys for public land management, unless the moneys were appropriated pursuant to a specific authorization enacted after the passage of the proposed act. This provision will, in effect, require greater congressional oversight of the activities of the land management agency, and we are pleased to endorse the proposal.

In proposals submitted to the last Congress, the administration sought a broad condemnation power. In the subcommittee print No. 1, this power has been limited to the acquisition of necessary access to the public lands. While we are pleased that earlier proposals for a broad condemnation power have been limited in such a manner, we would like to bring to the committee's attention the belief of some of our members that the power to condemn for any purpose should only be granted through special legislation when an actual need therefore can be demonstrated by the acquiring agency.

Section 202 (f) (2) provides that the Secretary shall insert in permits, licenses, leases and other authorizations to use public land authorization for the revocation or suspensions of such permits, licenses, leases, or other authorizations upon a final administrative finding of a violation on such lands of any applicable state or Federal air or water quality standard or implementation plan. We question whether or not the Secretary, or his delegate, is qualified

to determine whether a statute or regulation not administered by him, but by some other State or Federal agency, has been violated. We believe that, as a precondition to the exercise of the authority to revoke or suspend an authorization to use the public lands, there ought first to be a finding by a court of competent jurisdiction, or by the State or Federal agency having primary responsibility for enforcement of the statute or regulation alleged to have been violated, of such a violation.

Sections 210, 211, and 212 relate directly to the administration of domestic livestock grazing on public lands. They relate not only to the lands administered for grazing by the Secretary of the Interior, but also to those administered for this purpose by the Secretary of Agriculture.

It has long been the desire of the livestock grazing industry to have an equitable statutory formula for public land grazing fees, a formula which would be fair to both the livestock operator and to the Government. Presently, grazing fees are fixed by administrative action under rather broad and imprecise statutory directives. Although there is no statutory directive that the grazing fees should represent fair market value, a cooperative effort was made during the years 1966-68 by the livestock industry and the Federal agencies to determine the fair market value of public land grazing. It was determined that the fair market should represent the differences between the cost of doing business on private lands, including the lease rate, and the cost of doing business on public lands, excluding the fee. The industry and the agencies agreed on all cost items with the exception of one. The industry believed that because a public land permittee is required to own or control private properties—or water sources in arid areas—known as base property in order to qualify for a public land grazing permit, the investment which must be made in such base property ought to be recognized in computing the cost of doing business on public lands. The Federal agencies disagreed with the industry position.

Between 1966 and 1968, a survey was made to determine the average cost of doing business on the public lands and the average cost of doing business on private lands in order to compute the fair market value of public land forage, according to the formula adopted by the Federal agencies. After making some statistical adjustments, the Federal agencies determined that the fair market value of public land forage for the surveyed years was \$1.23 per animal unit month grazing. It was then determined that the fees will be fixed in subsequent years by using the sum of \$1.23 per AUM as the fair market value for the base period, 1966-68, and adjusting this amount each year either upward or downward according to an index of private lease rates. It was also decided that the fair market value fee would be achieved over a period of 10 years.

Although the industry has never abandoned its position that the investment the operator is required to make in base properties ought to be recognized as a cost of doing business on the public lands, it has accepted \$1.23 per AUM as fair market value for the base years 1966-68, for the purpose of computing grazing fees. It does not accept the index of private lease rates as an equitable method

of adjusting the base fee, primarily because the private lands used in the computations and the public lands available for grazing are not compatible. This is an important part, and I might expand on that—private land leases versus public land leases; if you remember a year ago, livestock prices were at an all-time high as recent as this fall. Early last fall, the prices took a dive, and a lot of cattlemen were faced with either financial ruin or holding their livestock over, and they were looking for feed for these livestock. They usually sell these cattle, these calves, in the fall. They come in off the ranges and range 450 pounds at that time. But this fall's market was so bad that they figured that they had to hold these cattle over or go bankrupt in their business, so they were looking for all kinds of available feed possible.

This spring, private grazing lands in California are selling all the way up from \$10 AUM. So you can see where this index, this range forage index in this permit, is a very dangerous thing, we feel, and we are real concerned about this part of the formula in this permit.

Last year the industry proposed a change in the formula to the Federal agencies. Our proposal was that an index of prices received combined with an index of operating costs be substituted for the index of private lease rates in adjusting the base fair market value of grazing each year. This formula would not only reflect the rancher's ability to pay, but would more precisely reflect the economic conditions which bear upon fair market value. Under the proposal, the government would have started charging the full \$1.23 per AUM, adjusted by the combined cost-price index, immediately.

It is our understanding that the management agencies accepted the proposal, but that it was rejected by the Office of Management and Budget. We believe that the formula we proposed is a fair and workable formula, and apparently the agencies having the direct responsibility for grazing management on public lands agree.

The subcommittee print number 1 of the proposed Natural Resource Lands Management Act does have a formula for determining public land grazing fee. Unfortunately, it is not a formula which is acceptable to our industry, the principal reason being that the formula contained in section 210(a) provides for a minimum fee of \$2 per AUM. To provide for either a minimum or a maximum fee would defeat the purpose of any formula which seeks to achieve fair market value as an equitable fee. Obviously, fair market value of any commodity fluctuates. An arbitrary floor, or an arbitrary ceiling, on grazing fees could work an undue hardship on the livestock operator in the one case, and could be unfair to the Government in the other.

Under present economic conditions in the western range livestock industry, few if any operators could afford the increase in fees which the enactment of this bill, as now written, would require. The result would be that many operators might well have to abandon the Federal range and their ranching operations, creating an additional depressing effect upon the economics of many local communities. We hope that the committee will either revise the formula.

in the bill substantially, and particularly by removing the arbitrary minimum from the fee formula, or delete the provision for the time being, leaving the matter to be dealt with by more special legislation at a later time.

We appreciate the fact that the subcommittee print No. 1 of the proposed Natural Resources Lands Management Act is designed to give permittees and lessees better tenure. Obviously, if the Government has need of its lands for another public purpose, the lands must be available. However, when the lands are available for livestock grazing, the permittee or lessee should have some assurance that he will be able to renew his permit or lease, and that the permit or lease will be for a sufficient length of time to enable him to make economic use thereof in connection with the ranching operation. In many areas, the extent of the public lands is so great that an economic ranching operation could not be conducted without the use of the public lands. The provisions of section 211 which provide that permits shall be issued for a term of 10 years, under normal circumstances, and that they shall be renewed so long as the lands for which the permit or lease is issued remain available for livestock grazing will help to achieve one of the principal objectives of the Taylor Act—the stabilization of the industry. In addition, such provisions will encourage greater private investment in range improvements.

As we have pointed out, under existing law and regulation, a permittee must own or control base properties in order to qualify for a grazing permit. Qualifying base properties have a value over and above similar properties which do not qualify the owner for public land grazing privileges. The additional investment which must be made in these properties can be partially, or even totally, destroyed by the cancellation of all, or a part, of the public land grazing privileges which attach to them. In many instances, base properties to which public land grazing privileges attach simply cannot be operated as an economic ranching unit without the public land privileges.

The requirement that a permittee own or control base properties helped to assure that bona fide operators, interested in the long-term productivity of the land, rather than short-term profits, would be the persons to whom permits and leases would issue. The requirement also protected the smaller operators who frequently found themselves literally pushed off the public range by large operations, many of which, in earlier times, were controlled by foreign interests.

We are pleased that section 211(e) provides for some compensation for the lost of authorized improvements placed upon the public lands by permittees and lessees when a permit or lease is canceled in order to devote the public lands covered thereby to another public purpose. We believe, however, that the provision ought to be extended to recognize the economic loss which can be sustained by an operator who loses his permit or lease in such an event. We believe that the permittee or lessee should be granted a reasonable compensation, to be determined by the Secretary, for the loss of the grazing privilege, when the lands are devoted to another public purpose, just as is already provided in those cases when the lands are devoted to a defense purpose.

We have some concern about the provision of section 211(e), which provides that permits and leases shall incorporate an allotment management plan, if available, which has been developed for the public lands only, after consultation with permittees. We believe that the allotment management plan should be created by cooperative agreement, where it is demonstrated that such a plan has merit. We do not agree that such a plan should be imposed unilaterally by a Federal employee who may be unfamiliar with the total ranching operation. The unilateral imposition of a management plan by an unknowledgeable official could actually be counterproductive to good conservation by disrupting good ranch management practices and procedures already instituted by the permittee.

This bill would correct a situation about which we have been most concerned by providing that the provisions of section 14 of the Federal Advisory Committee Act of 1972 would not be applicable to grazing district advisory boards created under section 18 of the Taylor Grazing Act. Last year, the Department determined that the grazing district advisory boards established under the Taylor Act would terminate as of January 5, 1975, pursuant to the provisions of the Federal Advisory Committee Act. The Secretary has apparently decided not to recharter these boards.

The grazing district advisory boards perform a specialized function. They advise the Secretary and the district managers on the allocation of the forage resource. They advise the Secretary on regulations relating to the administration of the Taylor Act and assist the district managers in making initial decisions on protests filed in connection with forage allocations. In addition, subsequent to the enactment of the Taylor Act, several of the Western State legislatures enacted statutes which provide for the return of a portion of the State's share of grazing fee receipts to the district boards for use for range improvements. These State statutes relate specifically to the advisory boards established under section 18 of the Taylor Act.

We do not oppose the creation of multiple-use advisory boards to advise the Secretary generally on the management of the public lands. However, we believe that the allocation of forage is a specialized function and that the advice of the Secretary and the district managers receive in respect to that function ought to come from those who possess the expertise necessary to properly advise those officials on forage allocation.

We have consistently opposed the grant of broad new discretionary authority to the Secretary of the Interior in the management of the public lands. And, while we cannot agree with all of the provisions of the Subcommittee Print No. 1 of the proposed Natural Resource Lands Management Act of 1975, we are pleased that the bill places some needed limitations upon the Secretary's discretionary authority.

Mr. Chairman, that concludes my statement. We would be pleased to answer any questions.

Mr. MELCHER. Mr. Webster, where I live, which used to be the Northern Pacific, and which had a great deal of land holding since they were land grant, the board of directors sat down in St. Paul and said they were going to get some sort of fair market value out of the lands they rent out, and they are. And it does not have anything to

do with talking about 10 years and providing land use. They just whooped it up. Everything that you have been criticizing public lands for as being unstable in ranching operations you could say six times for land that the Burlington Northern owns and rents because all of the disadvantages you have mentioned that the rancher has using public lands is extended doubled and trebled if you are a rancher that leases the Burlington Northern. They do not argue with you. If you do not like it, they feel they can find somebody else that does like it. And Congress really sits, I guess, as a board of directors over public lands and we are not getting much return on grazing.

I happen to think it is one of the real important parts of the multiple-use practice, and if we are to downgrade it or start to phase it out, this country is going to lose a lot.

So I am really concerned about people within the livestock industry continuing to talk about maintaining some tremendously low fees, whether it is forest or BLM or whatever, on public lands. I see your joint testimony with the woolgrowers and cattlemen association is to belabor that point about keeping these fees way down.

I do not kid myself or my constituency on this. I know that ranchers in Montana, in my district in Montana at least, have permits or leases on public lands and are hopeful they will not see much rise in the price of it. But the bulk of my constituency, of course, is not fortunate enough to have any public lands, and if they have any, it is a very small amount, so they know all about paying interest on purchasing the land or leasing it from people like the Burlington Northern or somebody else. Of if they bought it and paid for it, they do have to pay the taxes on it.

So I think we might as well put this in the proper perspective for the record. You talk about some operator going broke. While you were talking the thought occurred to me that most operators, I guess, are going to have to pay 10 percent on their bank loans or PCA loans, and probably they have those cows valued at \$250. They should not have, but they do, and that is \$25 a year just for the interest. And that would compare if you had a permit for \$1.25, somewhere in there, like getting the grass for a cow-calf for \$7.50 for 6 months.

So the interest just in a few years has gone up from \$15 to \$16 per head. If they are valued at \$2.50, if they had been the same valuation, given the money at 7 percent, would be about \$16-\$17. Now it is \$25. So we have had, really, a jump in interest rates and machinery.

You know I have a rule of thumb. I think a guy with a 300-cow outfit, even if he operates pretty conservatively, he probably has \$60,000 worth of machinery, trucks, pick-ups, hay baler, hay stacker, something, and the interest on that at 10 percent is \$6,000. And that sure has gone up, not only the value on the machinery. I do not need to tell you this, Mr. Weber, but I want to get it in the record because I want to counterbalance some other things that your statement said. Not only has the machinery gone up but the interest to pay for that machinery has gone up tremendously and we are talking about stabilizing only one thing or holding it down, and that is the grazing fees.

Now if we had gone in 1966 as we should have, and as you people started out to do with the Secretary of Interior and the Secretary of

Agriculture, and had these fees up there, let them climb in a 10-year period rather than stalling them off, we would not be talking about establishing them by statute to a much higher rate than they are now.

Well, I agree. You seem to advocate statutory fees. Frankly, I am not too upset about it going up or down. I do not know if we do have to have a minimum or maximum. I am sure we are not even thinking of a maximum. But I think we better get them up and I think we better get a formula that gets them up or we are going to find an awful lot of people on this board of directors in Congress that are going to be like the Burlington Northern board of directors were a few years ago when they said, "Get some value out of those lands or do something else with them," and we are going to find that right here in Congress. Those of us who know how important the livestock industry is for the Nation and really believe that it is of tremendous significance in the multiple-use concept are going to find it very hard to preserve that, but we better be talking realistically to our people here in Congress about grazing fees, or we are going to start to have a lot of trouble.

I want to point out, in your testimony you talk about unilateral decisions of the Secretaries, particularly Interior, on the so-called allotment management plan. We do not envision that. If you will turn to page 34, line 6, you will see that we have carefully designated that it will not be a unilateral decision. It will be in consultation with the permittees before they adopt allotment management.

What about this idea of one-half of the fee for range improvements, Mr. Weber?

Mr. WEBER. Do you mean our position?

Mr. MELCHER. Yes.

Mr. WEBER. Certainly we have always felt that any range fees or part of it should come back into the range management program.

Mr. MELCHER. One-half or what amount?

Mr. WEBER. Yes.

Mr. MELCHER. At least one-half?

Mr. WEBER. At least.

Mr. MELCHER. Mr. Freed.

Mr. FREED. I would like to speak to that, if I may. I think the range improvements have been sorely neglected for the last, I do not know how many years. This is something that is a going on improvement that helps every single year. Some people say to me, "This improvement may cost \$1,000. You will only get \$100 a year back out of it." Maybe it is \$100 a year for 30 years and it is a continuing thing in our area. Seventy-two percent of the State of Utah is federally owned.

So we feel in using these lands to get these improvements on the land, and so many of them are so far behind in keeping up with the times that we feel that this is a very sad thing. So this 50-percent thing we think is badly overdue and we want to endorse it very, very strongly. We think these range improvements, as I said, are sorely neglected and need bringing up to date in a hurry.

Mr. MELCHER. I do not get that in your testimony, though. We talk about in this bill that we feel that fencing and water development the types of range improvements we need. They are sadly lack-

ing, and I am glad we are bringing it out in questions because I find that your testimony touched on it only very briefly.

You did mention—I should not just say Mr. Weber because it is a joint testimony—the testimony did say that you are in favor of the policy as is suggested or as is provided in the committee print. If the lease is terminated or the permit is terminated, that the permittee or lessee would be compensated on a pro rata basis for his share of the permit improvement.

Now we have had a lot of criticism in this subcommittee, a lot of criticism from the administration, from the environmental groups, on specifying that the usual lease period would be 10 years.

Now I do not see any magic in 10 years. I think what the subcommittee is trying to enunciate in this language is if there is land available for grazing, that the permittee or lessee that has it will continue to get a chance to have it, as long as it remains available for grazing and as long as he abides by the regulations of the Secretary of Interior or Secretary of Agriculture.

Is that acceptable?

Mr. WEBER. Do you mean in lieu of the 10-year tenure?

Mr. MELCHER. Yes.

Mr. WEBER. We have always been for tenure on public lands and I think it makes a better partnership with public land management. If you are going to put improvement on your land and work cooperatively with the plan and you see 10 years down the road where you are going to be assured that you are going to have the use of this land, I think it makes a better cooperative agreement with the committees and the people who are supervising the land management.

Mr. MELCHER. I am not talking about 10 years. I am talking about an indefinite arrangement under these circumstances, that the permittee or the lessee abide by the regulations of the Secretary and that the land is not retracted or the land is not designated for a higher use by either Secretary.

Mr. WEBER. Of course this has been what we have been operating under for many years.

Mr. MELCHER. You have been operating under annual renewal.

Am I wrong?

Mr. WEBER. That is right. You are right.

Mr. MELCHER. We are talking about an annual renewal. I just somehow have the feeling that the subcommittee and both the director of the BLM who testified on Friday and the chief of the Forest Service, Mr. McGuire, who testified, and they have all been striving to do the same thing, put it into law, what has been the practice of both the Forest Service and the BLM—that is that once you have the permit or lease, as long as you follow the regulations, as long as that permit or lease was not withdrawn for some other higher use, that you have to continue.

Now we do not see any magical—I do not see any magic in saying 10 years. In fact, I do not see any particular desirability because what we have said here in the bill very carefully and very definitely that the Secretary still retains discretion to determine, first of all, conditions of the lease. He can cut down the AUM's if he thinks it is necessary, and being taken away from the permittee or the lessee if he finds that it is needed for a higher use.

I guess what I am asking you, do you find under those circumstances, do you find any disadvantage if we structure the language to say that as long as it remains available for public grazing the permittee or lessee will continue to get it?

Mr. WEBER. That is all right.

Mr. MELCHER. That is all right. Thank you.

The gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman.

I just find myself in mild disagreement with the chairman on two points. One, he is absolutely right. All of the costs have gone up. But of course this bill does not address all of the costs. This is the only chance that the industry has to attack this particular cost of grazing.

So I think it is entirely appropriate for the industry to attack the question of grazing fees at this time. Obviously this bill does not address itself to interest rates, the cost of machinery, the cost of feeding. So the chairman and I have never agreed that it is necessary to take a figure to appease the complainants. I think it has to be honest, it has to be realistic, it also has to be flexible.

I hope that you retain your insistence, that there either be a minimum or a maximum, that, indeed, whatever equitable formula is devised be allowed to fluctuate in the marketplace.

I just offer that for the record.

As far as the 10-year limit, I feel very strongly about this and I am entirely in sympathy with what the chairman was trying to do. He wants to cooperate with the administration, the people that administer this program. Believe me, that is a very important situation. But we had a good expression here that you fellows were not privileged to hear from Mr. Turcott of the BLM the other day on this matter, and I think it best personifies the human attitude of the people who administer the permits. That is, that they really know best and have got to have some kind of a lever and a 1-year permit or 2- or 3-year permit is a good lever.

If you get the indefinite term you are going to suffer in the long run. I think the 10-year term, my reason of describing this bill is not only important but very important. I hope that you will consider carefully your support of the indefinite term. Maybe we can devise some language that will make it acceptable. At this point I have not seen the language.

Mr. WEBER. Of course under the Forest Service permit system they do have 10-year permits.

Mr. STEIGER. The way they have used it, they have experienced no problems with it. They use it rather selectively, but I know of instance in which they have regretted the issuance of it. Again, it is a very tight permit.

In this you have to do what we tell you to do or you are in violation. There is a grandfather clause in all of them. It does not refer to anything. If you do not stand up and salute the ranger when he comes for coffee, we can cancel the permit.

So I fail to see where we place the Government in jeopardy. I do see where we give the kind of security that is necessary for the kind of investments that are necessary, the range improvements, the long-term investment, that there has to be some stability and I think the 10 years gives us stability.

Mr. CAVANAUGH. Mr. Steiger, I listened to the testimony of the Government the other day. I think maybe if their testimony was, the way I understood it, the situation might be satisfactory, the section might be made satisfactory to them. The very first sentence of section 211, if this were added, some language to this effect—as long as the lands to which the permit or lease is issued remain available for domestic livestock grazing.

I think what frightened them was that there was no qualification in that section 211 as it is written in the committee print.

Mr. STEIGER. Would you mind repeating that language?

Mr. CAVANAUGH. That you would, at the very beginning of the first sentence in section 211(a), so long as the lands for which a permit or lease is issued remain available for domestic livestock grazing, permits and leases and so forth shall be issued for a term of 10 years.

Mr. STEIGER. I would have no objection to that, but that would not mollify them, I will tell you. What concerns them is the “shall be issued for 10 years.” It is a prerogative they have had up to now. It is a lever that they have had. I think it is an unnecessary level. I do not think it really probably deserves the moment that was made of it even. I suppose it is my natural instinct that if they are fighting that hard against it, it must be good.

Mr. MELCHER. Will the gentleman yield?

Mr. STEIGER. Yes.

Mr. MELCHER. I want to point out that it is very important that we do have range improvement and the best range improvement we can have is a cooperative one between the Government and the individual permittee or lessee. We all agree with that. There is no quarrel with any of us or anybody in industry, nor with. I think, anybody in BLM or the Forest Service.

But if it is on a 10-year basis, we really should not be planning for the 10 years either because in practice the permits and the leases continue on year after year, generation after generation, and there is nothing wrong with that. It has not hurt us.

What has hurt us is we have not devised any means of having ongoing range improvements on public lands. So if you just have it set up for 10 years, by the time you get to the end of the last 3 years out of 10, the guy in making the permanent investment for range improvements would say, “Well, we only have 3 more years on those 10 years. We better wait until we get the new 10 year rates.” And during that period there are 3 years, 3 or 4 years of the last 10 years, where there would be the tendency on the part of the permittee or lessee to do that, where there should not be.

If he is going to continue to use it as long as it is available for grazing, if any of us are smart enough to know which land will be removed from grazing by either the Secretary of Interior or the Secretary of Agriculture, we would have crystal balls. We do not know. We assume, frankly we assume that most of this land, the bulk of it, way over 90 percent of it, as long as we continue to improve it, is going to be available for grazing because it is going to enhance the other values.

I am convinced if we improve grazing we enhance wildlife values, we enhance recreational values. As long as we see down the road we are going to continue this sort of policy.

Mr. STEIGER. I am going to destroy my friends' argument with one deft and telling bit of logic.

One of the reasons that the Forest Service 10-year permit system has been so successful, my friend is absolutely right when he says that there is only a few years remaining. There is a reluctance in this.

What the Forest Service has done, as I read this language, is they come in and say, "All right, if you will make these investments, then at this point in the 7th year of your tenure issue you a new 10-year permit"—that is done on a regular basis. It is done as an incentive to range improvement. It is a very positive incentive. In fact, it really strengthens the absolute, essential cooperation that the chairman discussed, which is absolutely essential. It strengthens that relationship. Again, the 10-year permit I really believe is very useful to achieve exactly the ends that the chairman would like to achieve.

I yield back the balance of my time. I yield to you.

Mr. MELCHER. I thank the gentleman for making that observation. It does make some sense.

The gentleman from Oregon.

Mr. WEAVER. Mr. Weber, you say there is a difference between public and private permits. Would you explain briefly what you see as the major difference between these two?

Mr. WEBER. Mr. Weaver, you are talking about in a formula?

Mr. WEAVER. You lease land from private owners to graze your cattle or do you lease lands from the Government?

Mr. WEBER. In our proposed formula of grazing fees of our own that I talked about, there is a provision. I will go back and say the formula that we are using now: private land leases and computed by a formula, what private land leases are going for versus public lands. And this is a dangerous thing that we see in this kind of formula. Of course, the Government—sure, they could put this out for bids, if there is that much competition. But I think we have to go further down the line about why instead of—and study the history a little bit of why these permits were set up.

Mr. WEAVER. Mr. Weber, I appreciate that. What I am interested in is the economic differences between leasing public grazing land and private grazing lands. One has established a much higher rate than the other, and you say this is the way it should be. You even go back as far as to say that they should not even be compared. Why should they not be compared in economic terms? What is the difference between an AUM on public land and AUM on private land?

Mr. WEBER. There is totally a lot of difference. Usually, a private land permit is managed by the owner of that private land, and usually it is irrigated land that we are talking about. And we figure there is no comparability within the two permits, private land or public land permits.

Mr. WEAVER. You mean the lease fee you pay the private landholder includes his management services?

Mr. WEBER. Right; fencing, fence upkeep, and the loss, too.

Mr. WEAVER. You are less likely to lose animals on private lands, as opposed to public lands?

Mr. FREED. There was a study made by Utah State University that there were 11 other costs accrued to the person using the public domain, as compared with private land. That is what we are talking about?

Mr. WEAVER. Can you cite a couple?

Mr. FREED. Yes. This loss of animals, salting, herding, fencing—you have much better control, whereas we have to turn them loose on the public domain, and trust to the problems we get into with vandals, that sort of thing. They have them under fence, they have them under control. There are all these things that come into it.

Mr. WEAVER. Is this typical of private lands?

Mr. FREED. Yes.

Mr. WEAVER. That they have all these services?

Mr. FREED. Yes. In my own case, I have leased private lands rather than where I could have gotten some public domain.

Mr. WEAVER. Thank you very much.

Mr. MELCHER. The gentleman from Nevada.

Mr. SANTINI. If I could follow up, because it is a fair economic question, the comparative evaluation of those kinds of lands, as subject themselves to ready fees in the commercial market, are usually prime A bargain. In comparison, quality grazing areas, they are plush meadowlands, irrigated, maintained with fence control, and go down in gradation to the public domain lands that are typically made available for grazing. That may be prime XYZ land by characterization. It is of much inferior quality, and it would be, I think, a very deceptive sort of formula to try and incorporate the two.

Mr. WEAVER. If the gentleman would yield.

Mr. SANTINI. Certainly.

Mr. WEAVER. An AUM is an AUM. Where there is XYZ land, it may take 100 acres per animal unit. Your prime land would only take 3 acres, or 1 acre. Is that not compensated in the size of the land?

Mr. SANTINI. The size factor may be compensated for, but not the managerial and additional facilities. I would like the gentlemen to respond to whether or not you do or do not approve of the content in general of this particular proposed legislation.

Mr. WEBER. I think we say in our statement here that generally we do, except the one item that is the grazing fee formula, which is our main objection to the proposal.

Mr. SANTINI. Overall, then, in summary, you would generally support Subcommittee Print No. 1?

Mr. CAVANAUGH. I think the answer is, if there is going to be a BLM bill, so-called Organic Act, certainly this one is preferable to anything that has been before the committee in the previous Congress. We question to some degree whether the bill is really that necessary, or that much of an emergency measure, certainly because they now have authorities under which they have been operating for many years—the Taylor Grazing Act, the Mineral Leasing Act, and others. Certainly, the public lands need some revision, and I think

this bill comes closer to the suggestions that were made, perhaps, by the Public Land Law Review Commission in its report in 1970, I think that we have testified.

We did not cover everything in this bill, Mr. Santini, because we felt that at this point the committee was particularly interested in our comments on the grazing section. We did testify last year on a bill that was very similar in nature—16800, I think—and we did make some comments. We have also testified previously that perhaps the Bureau does need greater enforcement authority in some areas. We were not quite convinced that they ought to be running around, the employees running around carrying guns. We had some objection to that, but certainly in some areas down in southern California, in some areas they have particular problems of enforcement. They do not have sufficient authority at this time.

I think, generally speaking, that we supported most of the provisions in those previous bills, and I think our prior testimony will show that we support most of the provisions in this bill.

Mr. SANTINI. Then, to capulate again, do you find this a preferable form of legislation, but you will not give an unqualified endorsement of this?

Mr. CAVANAUGH. Well, again I think we are probably in a position to do that, but I think we certainly find it preferable to the proposals that have been made, and I have not seen the administration proposal. It is not printed yet, but I suspect it is very similar to the bill that was passed by the Senate last year, and certainly this is preferable to that.

Mr. SANTINI. Do you suggest that there is one other area that the association has any objection—that is, to the law enforcement powers? that were conferred in the proposed legislation last year to the BLM?

Mr. CAVANAUGH. What we objected to primarily, we questioned the need. The bill permitted the Secretary to authorize, and I think this one does, too, to authorize employees to carry firearms in enforcement, and we are a little concerned about that. I think this bill does provide that they have to be specially trained, which of course is better. We do feel that they need more enforcement power, but we felt, when it came to a situation where an employee had to use arms to enforce it, that he would be better off if he went to the U.S. Marshal or the Federal Bureau of Investigation on it. But that, perhaps may be a nitpick. I do not think it is a nitpicking objection, it is a minor objection. They do need, in some areas, some enforcement authority they have not got, or they need the authority in lieu thereof to cooperate with local officials. Perhaps this bill provides that by perhaps making a cooperative agreement, under which local enforcement officials would receive money to supplement their own budgets, because the problem is in a lot of the areas where you have these vast public lands, the local enforcement officials that also have concurrent jurisdiction perhaps just do not have the funds to police the public lands, too.

Mr. SANTINI. Would you prefer a legislative proposition that would require, as a matter of a first instance, that BLM would go to local law enforcement, State or county law enforcement, and seek their assistance, rather than attempting to implement or enforce the laws as an independent law enforcement body?

Mr. WEBER. This very thing that you are talking about is done. The Forest Service does this now, in a lot of counties. They go to the local law enforcement agencies, and they police Federal lands. It works very well.

Mr. SANTINI. There is a provision in section 303 that suggests cooperation with local and State law enforcement officials. But I am at least considering something stronger in that direction that would mandate, in the matter of first instance, and say look and consider, the capacity of local law enforcement, rather than having a member of the Bureau having to assume the dubious distinction of becoming Matt Dillon in these areas, as well as attempting to be Smoky the Bear's assistant. And I think, although the Bureau has, I believe, in some instances practiced this in the past, they felt a sort of frustration and never-never-land about exactly what authority they did have, and could they move it at all. There had been some unfortunate incidents where apparently they were not able to do anything, but I have great apprehensions about either a biology or law graduate running around the force with a firearm. I think it could create far more unfortunate instances than it would rectify.

Mr. STEIGER. Would the gentleman yield?

Mr. SANTINI. Yes.

Mr. STEIGER. Of course, we could prohibit lawyers from carrying firearms. I would tell the gentleman there have been cooperative arrangements in violation of nothing between the Forest Service and local county enforcement, and sheriff's departments, where the Forest Service actually absorbed the costs of whatever extra deputies were required to police a given area. It is a problem; the gentleman is absolutely right in addressing the problem. I happen to feel very strongly with the gentleman that that is the proper approach, but you are against the desires of the bureaucracy again, that they envision a small enforcement army. So, if the gentleman intends to propose mandatory funding and mandatory cooperative enforcement with local law enforcement, you are right on target, and I would be happy to support that. I would hope the industry would understand the efficacy of that, because that is the way to answer the problem.

Mr. SANTINI. Thank you.

Mr. SHAFER. May I make a point of clarification on this enforcement provision that we have in here? It is almost identical to the present authority that the Forest Service has. There may have been one or two words that are changed, but it is almost identical to the present authority that the Forest Service already has. I would also point out the Park Service has similar authority. The fish and wildlife agencies have similar authority. It certainly was not the committee's intention that every clerk in BLM would go around posing as Matt Dillon or anything like that, Mr. Santini. But there are certain circumstances where, if a Bureau employee comes upon a violation of the law, by the time he goes back and rounds up the county sheriff, that individual is long gone, and there is no way of apprehending him.

So, this is a proposal to give very carefully selected BLM employees a very limited authority, and then only after adequate training.

Mr. SANTINI. I would disagree, to this extent. Please correct me if my instruction is incorrect. Any private citizen has the right to affect an arrest for a misdemeanor committed in his presence. With the sort of infractions that we are talking about, they are of the misdemeanor order. I can understand the natural resistance of someone without a clearly delineated source of authority for jumping in there and asserting the right of arrest. Most private citizens would be rather reluctant to pull over a speeder and place him under arrest, and take him to jail, but I think that authority exists now, and I just do not know.

Mr. SHAFER. I would agree with you entirely that that exists. But I think it would be a very bold Federal employee that would exert that type of general authority, Mr. Santini. I think it is more than you could really logically ask of them, that they would place someone under a citizen's arrest without any more protection than they have under that general authority. But I certainly recognize and understand your concern, and this was expressed to us very, very forcibly in hearings that we held in both Las Vegas and Reno in the last session of Congress.

Mr. SANTINI. It is a very sensitive arena, and I think it has been explored by the chairman and the gentleman from Arizona previously. But I think it does—needs, at least, clarification for this record. There is a great apprehension, for example, in Utah, where you have 77 percent public lands, I believe.

Mr. FREED. Seventy-two percent.

Mr. SANTINI. In Nevada, we have 86 percent public land. Perhaps the fears and apprehensions are unfounded. Nevertheless, they are very real, and they do exist. We are superimposing a Federal police force that is nonexistent in almost every other State in the Union, with the exception of Alaska. For example, the State of Utah, part of Idaho, I believe, Colorado, Arizona, Nevada—the western Rocky Mountain States, essentially—to create a Federal gendarme in the backyards of the smaller Rocky Mountain States of this country, where no other State in the Union is required to, and to accept this Federal police force.

Now, there is a problem; that is, some enforcement authority. The solution, I believe, lies in the implementation of the local law enforcement agencies wherever possible. The gray area—that is what we are going to do, when a BLM officer comes upon someone committing an infraction. But I would urge the committee, and say for the record now, that I think there is no need to throw out the baby with the bath water, and essentially creating an overextending law enforcement arm that could be misconstrued or misinterpreted, or perhaps represent a potential abuse of power 20 years from now, after these committee hearings have been burned.

Mr. MELCHER. Would the gentleman yield?

Mr. SANTINI. Yes.

Mr. MELCHER. The subcommittee really dwelt long on this very point during the last year, and it was only after receiving the testimony from officials in California and in Utah that the committee sought, in this language, to pattern for the BLM the opportunity for helping the sparsely settled areas in law enforcement, patterned after what the Forest Service has done. The Forest Service has de-

veloped a plan for having law enforcement complementing law enforcement in a sparsely settled areas, and what we have sought to do in this committee print is pattern for BLM that opportunity; because as the gentleman from Nevada knows better than anybody, the counties which are almost entirely public lands do have a very difficult time in providing law enforcement officers to cover all of the area. So we are only attempting to do no more or less than that, and I say to the gentleman from Nevada, before we are done with this committee print, before we report it out, the proposed bill in the full committee, I am sure that we will all satisfy the gentleman that we are not going to set up any type of forceful, overbearing staff to enforce laws that would be offensive to people. We only want a cooperative effort with them.

We found in last year's testimony, and in last year's review, that the Forest Service did this in certain areas, and we thought about something like that for the BLM in other areas, but only where it is acceptable to people in that area, where it will complement the regular law enforcement officials.

Mr. SANTINI. Thank you, Mr. Chairman.

Are there any other specific sections to which the cattle industry has objections, as contained in the bill, so we might clarify these at the outset?

Mr. CAVANAUGH. Well, of course, we mentioned in our statement some.

Mr. SANTINI. Outside your statement.

Mr. CAVANAUGH. Well, no. But if we could, we would like an opportunity, because this print just came into our hands, although it is similar to 16800, we just got it last Friday. If we might, we would like to go over it, and submit for the record if we do have any more specific objections. We have not had that much time to study it and disseminate it, certainly, to our membership for comment. So, if we may, we would like to reserve any outright endorsement of anything we have not talked about.

Mr. SANTINI. Can you say, in summary, any other specific objections or comments that you wish. All of it will be included as a matter of record in this proceeding, with the leave of the chairman. You will incorporate those observations?

Mr. CAVANAUGH. With permission of the committee, we will submit any additional comments.

I might say one thing. Mr. Chairman, what Mr. Weber perhaps overlooked, that is, we ought to make it a matter of record that under the industry-proposed fee formula, which was rejected by OMB after having been accepted by the Forest Service and BLM, the grazing fees would have one up substantially this year; more than 50 percent, as a matter of fact—and I would like to make that just a matter of record.

Mr. MELCHER. I am glad you brought it up. What were you advocating?

Mr. CAVANAUGH. We are simply advocating accepting the \$1.23 as fair market value for the base period 1966–1968, and varying that by a combined cost index, rather than the range forage index that is now being used. And we also propose—

Mr. MELCHER. When you say you want a 50 percent—

Mr. CAVANAUGH. It would have.

Mr. MELCHER. It would have gone up 50 percent. Are we to assume, then, that you are recommending \$1.85?

Mr. CAVANAUGH. I do not recall the exact figure. I believe it was \$1.51.

Mr. MELCHER. I do not know what 50 percent is—50 percent of what?

Mr. CAVANAUGH. It was more than 50 percent, if we went up 51 cents.

Mr. STEIGER. It was a lousy formula, let us face it.

Mr. MELCHER. At any rate, you are testifying that you did recommend a formula that would have established it for 1975 at \$1.51?

Mr. CAVANAUGH. I believe that was the figure, yes, which would be 51 cents more.

Mr. WEBER. This is what we say in our formula; that the price of cattle is up, we can no more afford to pay that higher grazing fee. It is escalating up and down, fair to the government and fair to the livestock growers.

Mr. MELCHER. I think you gentlemen are all aware that we have been struggling for a year or so on this subcommittee to arrive at some sort of a formula that would, through these factors, thoroughly reflect an ability to pay, as well as find the fair market values we have always considered having as one of the factors in the price of livestock.

The gentleman from Colorado?

Mr. JOHNSON of Colorado. I have no questions.

Mr. MELCHER. The gentleman from Massachusetts?

Mr. TSONGAS. I have no questions.

Mr. MELCHER. I want to thank you all very much for being with us, Mr. Weber, Mr. Freed, and Mr. Cavanaugh.

Now, our next witness this morning is Mr. George Alderson, director of Federal affairs, The Wilderness Society. George, welcome to the committee.

[The prepared statement of George Alderson follows:]

STATEMENT OF GEORGE ALDERSON, DIRECTOR OF FEDERAL AFFAIRS,
THE WILDERNESS SOCIETY

I am George Alderson, Director of Federal Affairs of The Wilderness Society, an organization devoted to the conservation of our nation's remaining wilderness resources and to proper use of the public lands. Our offices are at 1901 Pennsylvania Avenue, N.W., in Washington, D.C. We appreciate the opportunity to testify today on the livestock grazing provisions of organic legislation for the national resource lands.

The Wilderness Society strongly supports the use of appropriate public lands for livestock grazing, so long as it is done as part of a well balanced multiple-use program, under principles of conservation and sustained yield. Grazing on these lands is important to the stability of many small towns throughout the West. Therefore it is vital to improve the management of grazing on the public lands. The continued lack of good management threatens to undermine the contribution of livestock grazing to these communities by depleting the long-term productivity of the land, which also means a decline in other public values of the land, such as wildlife, watershed, recreational and wilderness values. In the long run, all these uses depend on the health of the land. If one is threatened, all are threatened.

Current figures provided by the Bureau of Land Management indicate that, as of December 1, 1974, the grazing lands of the public domain were in the following condition categories:

RANGE CONDITION

	Percent	Million acres
Excellent.....	2	3.2
Good.....	15	24.4
Fair.....	50	81.5
Poor.....	28	45.6
Bad.....	5	8.2

Range trend figures as of the same date were as follows:

RANGE TREND

	Percent	Million acres
Improving.....	19	31.0
Static.....	65	105.9
Declining.....	16	25.7

The present inadequate management also is severely harming wildlife, watershed and recreational values. This has long been the observation of citizen conservationists, and it was confirmed by BLM's 1974 Nevada grazing report. When he released the Nevada report in September, Director Curt Berklund stated that similar problems existed in other states as well.

We therefore commend members of the Public Lands Subcommittee for seeking to develop legislative provisions to improve the management of livestock grazing on the public lands. Better management will benefit grazing permittees, and it will benefit the public at large.

However, in the comments that follow, we will caution the subcommittee against several concepts that were proposed in the 93rd Congress which would have granted to grazing permittees unprecedented new rights or privileges and would have abrogated the multiple-use concept. In our view, livestock grazing must never be allowed to assume a status above all other land uses. It is only one of the multiple uses, and it must be kept on an equal footing with the others.

GRAZING FEES

The Wilderness Society has no objection to the enactment of a statutory grazing fee formula, so long as the formula results in fees comparable to or greater than the fees paid for the grazing of equivalent private rangeland. The objective here must be to avoid a subsidy to those who happen to have federal grazing privileges.

We do not object to the inclusion of national forest grazing under these provisions, but we recommend that the grazing provisions be placed in a separate title of the bill. We do not favor inclusion of national forests in any other parts of this bill.

RANGE IMPROVEMENTS

A proposal was made in last year's bill to allocate 50 percent of grazing fee receipts to range improvements. Our objection to that provision as originally proposed was that it lacked sufficient flexibility to respond to the diverse needs of different rangelands. In some areas, structures such as water developments or fences may be needed and proper. But in many cases, what is needed is non-structural management techniques aimed at improving livestock distribution on the range. Some of the techniques now in use, but not nearly as much as they should be, are the proper placement of salt or the daily visit of a mounted employee to drift the stock away from water, where they intend to congregate, and into areas of unused forage.

The BLM's Final Environmental Impact Statement on the grazing program, dated December 31, 1974, estimates that a 27 percent increase in available grazing could be achieved just by completing and implementing allotment management plans (AMPs) for the 82 percent of BLM grazing land that is

not yet covered by AMPs. Completion of the AMPs, which are not normally considered range improvements, clearly should be a high-priority objective under this legislation, and funding should be assured for the necessary work.

GRAZING PERMITS

The Wilderness Society favors a variable term for grazing permits and leases, with up to ten years as the maximum. We do not favor a mandatory ten-year terms as proposed in last year's H.R. 16676.

We recommend that no provision be included which grants or implies the automatic, indefinite renewal of grazing permits. Such language as appeared in H.R. 16676 comes close to establishing a vested right, and it gives a specially privileged status to grazing permittees that is enjoyed by no other users of the public lands. We recognize that the present practice is to renew the permits at each expiration, and we do not object to this in general. However, we are strongly opposed to establishing the renewal as a statutory right.

We recommend against any language that would allow compensation for the value of cancelled grazing permits, or any similar compensation. Language of this kind resurrects a long-standing controversy. Grazing on the public lands has always been regarded, in law and in principle, as a privilege rather than a right. This is appropriate because the permittee is using publicly owned resources for private gain. This concept of grazing as a privilege was specifically confirmed in the Taylor Grazing Act in the following words, which appear at the end of Section 3: "The creation of a grazing district or the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands." It would be extremely unwise to reopen this age-old issue by attempting to allow compensation in this legislation.

GENERAL COMMENTS

When The Wilderness Society testified before this subcommittee last year, we generally endorsed organic legislation for the national resource lands, with certain reservations. Today, however, we bring to you a message of concern for what such legislation will do to the public domain lands. We raise serious questions as to whether the land itself will be properly administered under legislation of this kind. And we will recommend a basic change in the thrust of this legislation.

The Wilderness Society strongly favors more effective management of the public domain lands, under conservation and multiple-use principles. That is our objective in the context of the Public Land Policy Act.

The crucial question at this juncture is: If new mandates are enacted, will they be properly carried out? Do we have an agency that will conscientiously implement this multiple-use conservation mandate?

The Wilderness Society has been hopeful that the Bureau of Land Management would respond well to this organic act. It has long been common belief that BLM has been handicapped by the conflicting statutory policies governing the public domain and by lack of funds and personnel. We believed that BLM had the commitment and the will to correct these long-standing problems, if given the means to do so.

However, the events of the past year have led The Wilderness Society to reconsider these long-held beliefs, and we have come to a different conclusion: As presently organized, the Bureau of Land Management is fundamentally incapable of managing the public lands under conservation principles.

Recent events, some of which we will enumerate, show that BLM is dominated by an overwhelming bias toward exploitation of energy resources at the expense of other land values. This bias would not be changed by the bill. Even if it required BLM to follow multiple-use and sustained-yield principles, the agency would still have its present major responsibilities for energy exploitation, including offshore oil leasing, coal leasing and geothermal leasing. These alone establish a fundamental conflict between the mandate of this organic act and the mandates of the energy exploitation laws.

Some of the recent actions of BLM which have led us to this conclusion are:

1. On October 1, 1974, BLM released a proposed "Primary Corridor System" for Alaska, consisting of 10,046 miles of highway and pipeline routes which

BLM asked Secretary Morton to set aside, without any prior study of their environmental or social impact. Several of these routes would breach Secretary Morton's proposed National Interest Lands units, while other would cross Alaska Natives' land selections in an attempt to renege on the Alaska Native Claims Settlement Act of 1971. The routes were justified in BLM's memorandum as being "keyed essentially to tapping a variety of identified energy resources of high prospective value."

2. On February 15, 1975, BLM announced that Secretary Morton had decided to turn over to BLM three great national wildlife ranges, comprising more than 2 million acres of prime wildlife habitat. This was the culmination of a long-standing effort by BLM to oust the U. S. Fish and Wildlife Service from these ranges—the Charles M. Russell National Wildlife Range (Montana), Charles Sheldon Antelope Range (Nevada) and Kofa Game Range (Arizona)—in violation of the intent of Congress in the National Wildlife Refuge System Administration Act of 1966. The long-range implications of this action may involve future BLM attempts to take over other units of the National Wildlife Refuge System and subject them to intensified exploitation for energy and other commodities. Twenty-five national conservation organizations have united in opposition to this transfer of the wildlife ranges, in a telegram to President Ford, which we are submitting for the record.

3. BLM has also succeeded in its attempt to gain control over millions of acres of the National Interest Lands in Alaska. Although the Alaska Native Claims Settlement Act did not call for any proposals involving BLM, the agency talked Secretary Morton into giving it primary control over two of the greatest scenic and wildlife area—the proposed 8-million-acre Noatak National Arctic Range and the proposed 3-million-acre Iliamna National Resource Range.

Like the case of the three wildlife ranges, this points up an extremely ill-advised trait of BLM to assert itself as an all-purpose land management agency. If it is a wildlife area, they say they can manage it as well as the Fish and Wildlife Service. If it is scenic, they say they can manage it as well as the National Park Service. This must stop. BLM should realize that it has its own role among the Interior Department agencies—to manage lands that are best suited to multiple-use management.

4. In its administration of outer continental shelf oil leasing, BLM has shown the same exploitation bias. Even if we acknowledge that Secretary Morton made the decision to expand the leasing program, it is BLM that is to blame for the incompetent environmental impact statement on the program and for completely inadequate baseline studies of the areas to be open for nomination. As a result, next to nothing is known about other resources in the areas to be leased. These are the criticisms made not only by conservationists, but by state and local governments affected by the program. BLM did not even hire a marine science staff in connection with the OCS leasing, but put its major efforts into influencing public opinion.

5. BLM has also been involved in a headlong drive to lease federal coal, and was only stopped by the moratorium imposed by the Interior Department in 1972-73. Prior to the moratorium, BLM had enthusiastically approved almost every application that was filed for coal leasing or prospecting, with to be strip-mined. Even now, BLM takes the position that another 300,000 the result that 780,000 acres of federal coal are now under lease, most of it acres will have to be leased, claiming that their issuance of prospecting permits binds them to lease these.

6. With phosphate leasing, the story is similar. BLM claims that, because they issued prospecting permits for about 25 percent of the Osceola National Forest, in Florida, they must grant leases for this. It will be open-pit mined, destroying all other land values of that portion of the National Forest.

7. BLM also handles the leasing of geothermal energy under the Geothermal Steam Act of 1970. The regulations issued by BLM under this law in January, 1974, incredibly allow geothermal leasing in wilderness areas of the National Forests.

8. BLM has failed to carry out the intent of Sec. 17 (d)(1) of the Alaska Native Claims Settlement Act, which was to classify the remaining public domain lands in Alaska for multiple-use management. Instead, BLM has focused its energies on interfering with the National Interest Lands, which were never intended to involve BLM.

Mr. Chairman, these are some of the actions that have opened our eyes to deep-seated problems in the Bureau of Land Management. They reveal a bias toward unmitigated exploitation that is absolutely unacceptable on the part of a public land management agency.

There is no easy solution to this dilemma. We believe that an organic act is not the answer, although we are steadfast in our support for its concepts. But to give BLM such a mandate now will not solve the problems of mismanagement that result from the conflicts with BLM's energy exploitation functions. We believe a basic reorganization is needed.

We would favor establishment of an agency devoted solely to management of the renewable resources of the public domain lands under the provisions of an organic act for the national resource lands. The energy and minerals functions should be assigned elsewhere in the executive branch.

We appreciate the opportunity to testify here today.

STATEMENT OF GEORGE ALDERSON, DIRECTOR OF FEDERAL AFFAIRS, THE WILDERNESS SOCIETY

Mr. ALDERSON. I am George Alderson, director of Federal Affairs of The Wilderness Society. I would like to say we appreciate the opportunity to testify this morning on the grazing provisions of this bill.

Before presenting my statement, Mr. Chairman, I would like to ask for a clarification of my understanding of the way these hearings are organized on this bill. My understanding is that this particular hearing today is devoted only to the grazing provisions of the bill, and that there would be an opportunity at a later date for our organization to present our comments on the other aspects of the bill. Is that correct?

Mr. MELCHIER. That is correct.

Mr. ALDERSON. Thank you.

If my statement could be included in full, I will merely present some of the highlights.

The Wilderness Society strongly supports the use of appropriate public lands for livestock grazing, so long as it is done as part of a well-balanced multiple-use program, under principles of conservation and sustained yield.

In the longrun, as the chairman stated, all of the values of the public lands—grazing, wildlife, watershed, recreation, and the rest—depend on the health of the land; if one is threatened, all are threatened.

Current figures provided by the Bureau of Land Management indicate that, as of December 1, 1974, 83 percent of the grazing lands administered by the Bureau is in fair, poor, or bad condition. The details are in my statement and in the BLM presentation to the Senate Appropriations Committee this January. The range trend figures show that only 19 percent of this land is improving in condition.

The present inadequate management affects the livestock value of the land and affects wildlife, watershed and recreational values. This has long been the observation of citizen conservationists, and it was confirmed by BLM's 1974 Nevada grazing report. We also note that when Director Berklund released the draft of that report in September, he stated that similar problems existed in other States as well.

We commend the members of this subcommittee in seeking to develop legislative provisions that would improve livestock grazing and other values on the public lands. Better management will benefit grazing permittees, and it will benefit the public at large.

However, in the comments in our written statement we caution the subcommittee against several concepts that were proposed in the 93d Congress which would have granted to grazing permittees unprecedented new rights or privileges and would have abrogated the multiple-use concept. In our view, livestock grazing must never be allowed to assume a status above all other land uses. It is only one of the multiple uses, and it must be kept on an equal footing with the others.

Mr. Chairman, I do not desire to read the specific comments that are enumerated in my statement on the grazing provisions. I would like to stress in the case of the range improvement provisions that we basically believe it is unwise to set up an earmarked fund of this kind which ties the range improvements and range rehabilitation to receipts from the grazing program itself. This could create a strong bias towards heavier grazing on the part of the agency administering the program, to the detriment of the land. This situation, namely that we are going to get more money for range improvements, if we allow more grazing this year, creates an incentive that could seriously bias the judgment of the personnel in the agency who are making these decisions. So we would like to sound that cautionary note.

Turning to a more basic question, Mr. Chairman, when The Wilderness Society testified before this committee last year, we generally endorsed organic legislation of the national resource lands with certain reservations. Today, however, we bring to you a message of concern for what such legislation will do to the public domain lands. We raise serious questions whether the land itself would be properly administered under legislation of this kind. We will recommend a basic change in the thrust of this legislation. We believe it is preferable to defer this bill until a reorganization of the Bureau of Land Management can be carried out to eliminate the basic conflict of interest that is now biasing many of BLM's decisions.

Our objective in the context of the Public Land Policy Act is to foster more effective management of the public domain lands under conservation and multiple-use principles.

The question at this juncture is if these new mandates are enacted, will they be properly carried out? Do we have an agency in the Bureau of Land Management that will conscientiously implement this multiple-use conservation mandate?

We had hoped for many years since this legislation was developed that the Bureau of Land Management would respond well to this act. It has long been common belief that the BLM has been handicapped by conflicting statutory policies governing the public domain, by lack of funds, and by lack of personnel. We still think this is true. We believed that BLM had the commitment and the will to correct these longstanding problems, if given the means to do so.

However, the events of the past year have led The Wilderness Society to reconsider these long-held beliefs, and we have come to a different conclusion. As it is presently organized, we believe that the

Bureau of Land Management is fundamentally incapable of managing the public lands under conservation principles.

These recent events, which are enumerated in my written statement, show that the Bureau of Land Management has come to be dominated by an overwhelming bias toward exploitation of energy resources at the expense of other land values. This bias would not be changed by the bill. Even if the bill required BLM to follow multiple-use and sustained-yield principles, the agency would still have its present major responsibilities for energy exploitation, including offshore oil leasing, coal leasing and geothermal leasing. These alone establish a fundamental conflict between the mandate of this organic act and the mandates of the energy exploitation laws.

I do not want to read all the specifics that we cite, but we believe that the eight points are indicative of a bias that has resulted primarily from the energy responsibilities being united in a shotgun marriage with land management responsibilities. There is no easy solution to this dilemma. We believe that an organic act is not the answer, although we are steadfast in our support for the concept of the Organic Act.

To give BLM such a mandate now will not solve the problems of mismanagement that result from the conflicts with BLM's energy exploitations. We believe a basic reorganization is needed to separate the management of the renewable resources of the public domain lands from the energy and mineral functions that we believe should be assigned elsewhere in the executive branch.

We have not come up with a specific reorganization proposal, but we believe that deferral of this bill would allow time for the subcommittee and all concerned citizen groups to explore this and see if there is not a better way to organize this agency so that the energy functions are not going to continue to dominate the land management functions.

Thank you.

Mr. MELCHER. Thank you.

Part of your testimony was to the effect of how much land was in poor range condition, and you testified, repeating from the BLM source, which would mean that you agree with, that 45.6 million acres are in poor condition; 8.2 million acres are in bad condition; range trend was 65 percent static and 16 percent declining.

So I do not see why we should view our responsibility here in Congress to defer action. We better get with it, do you not think, on some of these things?

Mr. ALDERSON. We certainly should on the land management functions. It is not going to help the range condition any if BLM is out there leasing the land for coal, either, and that kind of problem deserves consideration. Here we have an agency that is gung ho for all the coal leasing, and they finally had to be restrained by the department leadership. And they still feel they have 300,000 acres that have to be leased. Our conservation lawyers disagree with them. But that is a bias of BLM that is going to cause great damage too.

We certainly agree that we have to move on the land management functions.

Mr. MELCHER. I do not know. You know, 300,000 acres to be leased is a two-way street. Where would this land be added? I mean, somebody wants to lease it for coal; who wants to lease it?

Mr. ALDERSON. I do not know exactly where that is, but this is land on which BLM issued prospecting permits earlier under the Mineral Leasing Act.

Mr. MELCHER. Of course, you understand the Mineral Leasing Act is not under the jurisdiction of this subcommittee, and Chairperson Patsy Mink has already opened hearings for revision of the Mineral Leasing Act. Those remarks would be more appropriate in that subcommittee, and I am sure The Wilderness Society is testifying there, too, on these points, are you not?

Mr. ALDERSON. Yes, we are.

The same agency is in charge of administering both programs.

Mr. MELCHER. That is right.

You are talking about 300,000 acres of coal leases, right?

Mr. ALDERSON. Yes.

Mr. MELCHER. I refer you to the northern Great Plains resources study, a study which has come up with three projections of possible coal mining in the Fort Union coal deposit, which would include BLM lands and some Indian reservation lands and, of course, private lands and State lands. There are three different sets of figures, but using the greater set of figures, the greatest amount of land that might be mined is 396,000, virtually 397,000 acres. They are talking about the year 2000. Now this would provide 977 million tons of coal per year. The reason I am pointing this out is we are only using 600 million tons of coal per year now in this country, and the projection is that we will use more coal; but no one really has projected that we will take almost 1 billion tons of coal per year out of the Fort Union coal deposit.

So this profile, taking their third profile, which is probably high, by the year 2000 they are talking about disturbing 390,000 acres of land. Now, this is all types of land, a portion of which would be BLM land. If there is somebody who is interested in coal leases in that area, it hardly seems to me to be likely under any set of circumstances that all of those leases will lead to coal production.

Now, I am not so sure that we should blame the BLM for somebody wanting to lease coal. The moratorium is in effect, and I think before the moratorium ends we should have a revision of the Mineral Leasing Act. Congress is striving to do that.

I think we will have to make sure Congress gives the guidelines as to how we are going to have this natural resource developed rather than leaving it up to the judgment of the administrators, whether it is the Secretary of the Interior, or the Director of the BLM, or some other Federal agency that you might recommend to Congress to take charge of this.

I really believe that the time has come for Congress itself to make more decisions on what we are doing with our natural resources. That is where the responsibility lies anyway, and we should establish by statute, just what we want done in developing the public lands.

I am increasingly disturbed by the fact that I hear too much of what I view as rather loose statements coming out about coal develop-

ment in my part of the West, because almost all of these statements are being made in the press by organizations. When they talk about Western coal developments they are talking about coal development in Wyoming, Montana, and North Dakota, and we have a great concern with what has been said there. We want it properly understood by the people who are there what might happen.

On the other hand, we do not want them misled, our constituencies misled, by some statements that are not very accurate. I am not saying you are making inaccurate statements. I am saying that there have been inaccurate statements in the press by some of the national organizations. I am not placing any of the blame for those statements.

Mr. ALDERSON. Mr. Chairman, the coal leasing is only one of the things that we think is wrong, where the energy functions are overwhelming the land management functions of the agency. You can tell from the personnel figures in the BLM during the last 2 years. While other natural resource agencies have only been able to hold even on their personnel ceilings at OMB, BLM has been given 800 new positions, and I just saw that they were adding dozens in Montana during this year. I forgot whether it was 20 or 40, covering Montana and the Dakotas, and that is for this energy function.

So when you get an agency with a large staff devoted to energy at the same time that you are trying to carry out the multiple-use and sustained-yield mandate, you have two basically opposed concepts of resource management in the same agency, and we do not think they will fit together.

Mr. MELCHER. You mentioned Montana. Of course, I have a great concern about what we are doing with BLM-administered lands in Montana. I do not really find that the projection from the State director's offices is for a great deal of mining on public lands—their estimate is 5,000 acres will be mined during the next 10 years on BLM-administered lands. When you are striving to determine under some sort of system what will be the best areas to mine that will lend themselves to reclamation without any danger of disturbing the land by stripmining and then not being able to reclaim it, or what areas of BLM-administered lands will be stripmined; it is true that even 5,000 acres will have at least social impact upon the area.

I think you need some study, and I think this is all new to the BLM, and I think that they should proceed with it. I do not think, at least in their minds, at the State level, that they are looking for much acreage of BLM coal leases, to be executed to the extent that there would be an improved mining policy.

The gentleman from Nevada.

Mr. SANTINI. Thank you, Mr. Chairman.

Mr. Alderson, this is our initial acquaintance, and I am endeavoring to get a clear understanding of your position, if I may be permitted, by way of summary, and then you could comment to amend, alter, or add to, as you see fit.

It seems to me it is a bit frustrating, from my posture here as a new member, that you are coming before the committee, you are suggesting you support general objectives contained in the so-called Organic Act, but you are opposed to the BLM as an administering agency, and you recognize that a need exists for the legislation but,

in the final analysis, propose that we do nothing. From my meager analytical resources, that is a useless sort of advocacy to assume. We have a problem, what is the solution, and it seems that your position is untenable. I do not mean to offer that by way of argumentation.

What are your thoughts on that?

Mr. ALDERSON. We would be delighted to see the committee move as fast as possible and see if we can come up with a way that will separate the energy functions out. I do not think that would necessarily take very long, a matter of a few weeks, to try to come up with some concept that would do that. But it is frustrating for us, too.

Last year we testified strongly in support of organic legislation for the natural resource lands, and we spent many, many hours discussing this with the committee staff and others last year. So a lot of our thought has gone into the legislation that is before you here. We finally went back and looked at all the things that were happening and came to the realization that there has to be a new concept. We advocate a new concept in this bill that will lead to a separation of the two functional areas.

Mr. SANTINI. What is that new concept?

Mr. ALDERSON. To set up a new agency for renewable resources on the public lands and have energy functions placed elsewhere. The question I cannot answer is, should those be placed in some other agency that is now in the entire Department, such as the Bureau of Mines, or should there be a new agency, or should it be a part of FEA?

Those are questions that we have not come to a conclusion on yet, but I hope that we may be able to propose something more concrete by the time that the hearings are called on the other aspects of the bill.

Mr. SANTINI. Being an advocate of an interest, you should have the burden of proof or burden of persuasion. And I think you fall short at this point in carrying that burden. I would urge you strongly, whatever the concepts are in a negative form, that at this time they be translated into concrete action. Otherwise the testimony is of absolutely no use to this committee.

Thank you, Mr. Chairman.

Mr. MELCHER. The gentleman from Arizona.

Mr. STEIGER. Thank you Mr. Chairman.

I would like to pursue the point raised by the gentleman a little further. You give some lip service to multiple use concepts in at least three points in your statement, and yet, your advocacy of a separate energy department, of course, is in complete violation of the multiple use concept. I know that you understand the multiple use concept means that the land is used to accommodate as many uses as is compatible with the ability to support them, sustained yield, and appropriate conservation practices.

I would like you to explain at least—since your association has not come to any conclusion—but at least in your own mind, what possible benefit it could be to develop, in your own words, another advocacy division outside of the borders of the purview of the Land Management Agency itself. You have come up with a bit of logic that escaped me and the gentleman from Nevada. I would be interested to hear it.

Mr. ALDERSON. I would be glad to respond to that.

I want to go back though to the question of energy as being a part of multiple use. This concept of multiple use management included minerals and energy as well as nonrenewable resources. My recollection is it originated with last year's bill. It is not in the Multiple Use Sustained Yield Act, which governs the Forest Service operations, and the Forest Service does not have energy as part of its charge.

My recollection is those previous laws were based upon multiple use of renewable resources.

Mr. STEIGER. I am going to interrupt you there, since you are apparently confused, and the record should not be. The reason the Forest Service, under its multiple use program as originally devised, did not address the minerals question—again it was because of an arbitrary administrative decision to place all mineral development under the Department of the Interior. So it would have been in violation of the law, as well as the structure, to include mineral responsibility in the Forest Service.

Mineral responsibility is inherent in the bill mandate because of the compatibility with the Interior mandate. So really, I understand your desires—it is a very worthwhile desire you want to protect the land. I really think you ought to go home and do your homework, and recognize that if the suggestion is just to change titles or to change players or fraction advocacies, historically that only compounds the problems. It does not minimize—

Mr. SANTINI. Would the gentleman yield?

Mr. STEIGER. I would be happy to.

Mr. SANTINI. If I understand the concept that is in the formulation stage here, what you are proposing is fractionalizing the interest or commitment of the administrative agency confronting the problem of energy use of the land; set off the Department and keep it isolated or removed from what you consider to be inherently a contradictory ambition. But the danger implicit to that is—what you are proposing is the total breakdown of what has taken so many years to formulate and obtain acceptance for—that is, the multiple use concept.

Why then, could not those who look at the land for livelihood come in and say, I think our interests are unique and there is an inherent conflict in the Department; we want a separate Department, and so on down the line. A fisherman could come in and say, our interests are unique and different and there is inherent conflict in the Department and we want a separate Department.

Can you see the sort of disintegration of any possible, realistic administration of the multiple use concept if at least one extension of your reasoning is taken to its logical conclusion?

Mr. ALDERSON. I see what you mean.

To answer both your point and Mr. Steiger's, we see the energy extraction functions as being basically different in nature, and the management of energy resources as being basically different from the management of the renewable resources, because in the case of grazing and in the case of timber and the case of watershed, wild-life values and recreation, we are talking about managing a resource

for a sustained yield over a long period of time. You are managing it so that in any use that you allow, it will be restored over the coming years or over the coming season. You are also dealing with a natural biological ecosystem. On the other hand, when you take energy out once, then it is gone. The best you can do is put the land back into shape after that has been done.

The reason for our advocating a division of these basic functions is so that you are able to retain an advocacy for the health of the ecosystem—the grazing ecosystem and all of the other values that come from that ecosystem. We would like to see an agency that is basically charged with these renewable resources so that when the proposal is made that the land out there be leased for coal, this agency has a director who does not have energy responsibilities. His responsibility is for the renewable resources, so he says, “We recommend that you do not lease from these particular areas, and we recommend that these are more acceptable.” He is coming from the expertise of his agency and the responsibility of his agency to advise the Government on the renewable resources functions.

Of course, the energy people carry a great deal of weight. But that way, they are carrying out their program under their mandates, and you also have a renewable resource agency that is going to carry out its mandate to retain the health of the land and the long-term productivity of that land. That is the basic division. What is the alternative?

The way the Bureau of Land Management is now——

Mr. STEIGER. I am going to have to interrupt you, Mr. Alderson. I am sorry. We do have other witnesses; we are out of time. I would like to take note of the competitiveness about your effort. I am going to point out—or attempt to drive the final nail in the coffin of your statement. You described the benefits to be derived from, if you will, differentiating advocacies. And yet, on page 7 of your statement, item 2, one of the evidences that you offer to the new rapacious bent of the Bureau of Land Management when Secretary Morton transferred three areas to the sole administrative responsibility of BLM. What you failed to mention was that prior to this transfer, there was a joint administration of the U.S. Fish and Wildlife, not only of these three mentioned, but a fourth in Arizona.

The decision was made to transfer that area entirely to the Fish and Wildlife, and these others to BLM. Now that offends you, yet it is entirely in keeping with the broad overview of what you say ought to be the approach vis-a-vis energy. The Secretary made a judgment that approximating dual management was not in the best interests of efficiency or the operation itself. You object to it; I presume that you object to it because you need a cause—even as obscure as this cause is; this will do something to rally the troops around.

I only hope in the pursuit of a most excellent goal that you do not continue to delude the membership and prod them into whatever action you feel is appropriate. But rather, stay with the rather basic principle of the Wilderness Society as they originally intended. As I understand it, that was in the passage of the Wilderness Act to sustain—to be sure the act itself is properly administered. And now

those opportunities that exist for lands that ought to be in it, call those to the attention of the appropriate folks. That is probably a very worthy and positive effort, but it is obvious, when you stray from your own range, you are lost. And I think you do the Wilderness Society a great disservice when you do that because you mitigate the valuable suggestions that they frequently have.

I will yield back the balance of my time.

Mr. ALDERSON. Mr. Chairman, may I respond to the question?

Mr. STEIGER. There was no question.

Mr. MELCHER. The gentleman from Massachusetts.

Mr. TSONGAS. Thank you Mr. Chairman. I am just going to ask an informational question if I can.

Although I consider myself a strong conservationist, I have never set foot on grazing land—probably would not know it if I did. On page 2 you refer to range condition and range trend. My question—being not familiar with the area—what point in the breakdown between excellent, good, fair, poor, and bad—what is one future point of deterioration—which of the five categories is the point of deterioration?

Mr. ALDERSON. The deterioration would be a change over time. So if you were asking what land is deteriorating, you would look at the range trend data, you would see 16 percent of the land is what they call declining in trend. So that is land that is currently deteriorating according to the samplings done by the BLM personnel.

The range condition is a static measurement. It tells you what relative condition class the land is in at the time. I do not have with me the descriptions of the criteria they use to distinguish between those categories, but I believe they would be in BLM's report to the Senate Appropriations Committee, which should be available to members of the subcommittee.

Mr. TSONGAS. One experience that I had in regards to Walden Pond in Massachusetts—a statement that was made at the time was that the land had deteriorated to such a point that unless something was done, in essence it would become useless. I think that was a reasonable kind of classification. So the statement, for example, that land is poor has absolutely no meaning to me whatsoever. Or it is bad—does not mean that no matter what you do to the land, it will always be bad?

That particular land, if properly managed, can probably become fair 10 years from now, and so forth. So the categorization, I think, perhaps there is a purpose, but with someone who is not familiar with the area, it has no purpose whatsoever.

A final question, if I may. You say that 19 percent of the land is improving; 16 percent of the land is declining. What factors cause land to improve, and to decline, beyond that which is obvious? Is this improvement because of something the Federal Government is doing, something the Federal Government is not doing, or what?

Mr. ALDERSON. It can be a variety of factors. The things that the range management profession aims to do is improve the land. For one thing, you could adjust the grazing of the land to the capacity it can stand year after year. Of course, the number of cattle or sheep

you allow on it, the time of year you allow them on it, how long you allow it, the range improvements that have been talked about earlier can result in improvement. You can do things with rest rotation grazing systems that distribute cattle use and give the land a time to rest at seed time or other appropriate time; the placement of water in places to get the cattle distributed better around the range in unused areas; the distribution of salt; the drifting of the cattle—to have an employee go out there and drift them away from the water where they always congregate.

There are many, many techniques that can be used to improve it.

Mr. TSONGAS. Who is imposing the techniques? Private enterprise? The government? At which level, government?

Mr. ALDERSON. Since it is public land, it is the responsibility of Bureau of Land Management to make sure that these things are done. But some of them, such as the salt placement and the drifting of the cattle out, would be done by the permittee.

In other cases, such as range improvements, they can be done by the government. But many are done under a cooperative program where the costs are shared between the Federal Government and the permittee.

Mr. TSONGAS. Thank you.

Mr. STEIGER. I just cannot let the record stand. I think the gentleman asked some excellent questions. The witness's response of deterioration is the result of many factors is a fair response. The gentleman's specific question about who is responsible, the Federal Government or private enterprise, is really at the heart of our effort here. Everybody, with the apparent exception of the Wilderness Society, agrees that the improvements are the result of absolute cooperation between the two segments that you mentioned. And even with that cooperation, some areas—as you anticipate—the range will continue to be bad, or poor, or whatever.

But what is absolutely essential is the combination of the stewardship of the Government and the practical on-site management by private enterprise. That is why it is a delicate relationship, and I do not think anybody can say absent one that one or the other is deficient. That is one reason why the particular area is deficient.

Clearly without the equal input of both—

Mr. ALDERSON. We do not disagree with that. My statement was that the Bureau of Land Management is the agency charged with the basic responsibility to make sure it is done.

Mr. Chairman, I really request an opportunity—

Mr. MELCHER. Does the gentleman from Massachusetts have any more questions?

Mr. TSONGAS. No.

Mr. MELCHER. I have some questions.

The point that you speak of on page 7, item 2—would you consider the Secretary's decision to change the land with C. M. Russell Game Range and others from the jurisdiction of the Fish and Wildlife Service to the BLM—would you consider that to be a withdrawal?

Mr. ALDERSON. I do not consider it a withdrawal by itself, no.

Mr. Chairman, Mr. Steiger misrepresented the views—

Mr. MELCHER. Do you see any relevancy between that decision on the part of the Secretary, and what the subcommittee was trying to address itself to in section 204 of the committee print when we said that withdrawals or changes in the pattern of land management over 5,000 acres would be subject to congressional review? You do not see any relevancy between the two actions and what we are trying to address ourselves to in section 204?

Mr. ALDERSON. I do not believe that the Secretary's action on the game ranges qualifies under that provision as a withdrawal. It is certainly relevant.

Mr. MELCHER. I think we are going to have some problems then in communication, because that is specifically what we were talking about, and that is specifically what I described to you and many others representing the environmental groups when we met on at least two occasions last summer. And I was assured by your organization and other environmental groups that you had no fear of this and had no problem with it.

Now we would be interested, when we get into subsequent hearings, what your organization which had protested about this decision made by the Secretary—what your organization will recommend in the bill. But I can assure you that that is exactly what the subcommittee was addressing itself to in this section—the very point that you are now objecting to.

When the Secretary makes a decision, we say it should be the responsibility of Congress. The Committee is at least going to agree that that is the responsibility of the Congress. We are going to have changes of the land management policy on public lands. We think they should be directed by Congress and reviewed by Congress, and the decision not made by the executive branch alone.

I know you wanted to say something in response to the gentleman on my right.

Mr. ALDERSON. Thank you.

I wanted to clarify our position on that. We also do not favor the dual administration of those wildlife ranges, but our solution is different than Mr. Steiger's. Our proposal is to assign those to the Fish and Wildlife Service instead of BLM.

Mr. MELCHER. I think our solution in the subcommittees was that we think we ought to have congressional direction on broad, sweeping land management decisions.

Well thank you very much. We will be looking forward to further testimony from you when we take up the hearings on all aspects later on. Hopefully, early in April.

Mr. ALDERSON. Thank you.

Mr. MELCHER. Our next and last witness this morning, since Mr. Garrett cannot be here, is Karl Landstrom. Without objection, the statements of Mr. Spencer Smith, representing the Citizens Committee on Natural Resources, and Mr. Charles Clusen, representing the Sierra Club, will be made a part of the record at this point.

Hearing no objection, so ordered.

[The prepared statements of Mr. Spencer Smith and Mr. Charles Clusen follow:]

**STATEMENT BY DR. SPENCER M. SMITH, JR., CITIZENS COMMITTEE ON
NATURAL RESOURCES, WASHINGTON, D.C.**

Mr. Chairman and Members of the Committee: I am Spencer M. Smith, Jr., Secretary, Citizens Committee on Natural Resources, a national conservation organization with offices in Washington, D.C.

The present grazing fee system was established by the 1966 Western Wide Livestock Grazing Survey to be effective in 1969. This survey used a ten increment schedule to adjust the actual 1966 fee to the 1966 fair market value. The specific fee adjustments resulted in a fee of \$1.23 per AUM, a raise of 72 cents (.072 per increment), for all National Forest Lands and 90 cents (.09 per increment) for all BLM lands.

Each year an adjustment will be made based on the index of Private Grazing Land Lease rates for 11 Western States. By 1980 a fee for sheep and cattle will be the same for both National Forest Lands and BLM lands. The system was implemented as scheduled in each year, starting in 1969 and concluding in 1974 with the exception of 1970, which found a moratorium placed on any increases and in 1972, which found an increase of 30% above the 1971 schedule.

Both the consideration of the Public Lands Act and the recommendation by Secretaries Morton and Butz to reduce the grazing fees for the next season has focused attention again upon the means and equity of such fees.

Our own attitude is that no reduction of such fees is in order. The difficulty of grazers is real and in all probability should be seriously considered but in another context. A subsidy to the grazers by reducing fees creates more inequities than it corrects. It benefits only a few and then by reason of location not on the basis of need. Additionally the benefits can be extended to only a small percentage of grazers. Some have contended that the reduced fees in reality would constitute a regressive tax.

Actually the parameters are more extensive than just the above. Any fee must be fair to the public not only because a fair return to the property owner (the public) is in order, but to maintain the public lands to a standard required for long term use. Additionally, the permittee should not be placed in a competitive advantage with non permittees.

A summation of equity in this matter perhaps was most succinctly put by a Forest Service release: "Fair market value is a measure of equity between permittees and the public and between permittees and those ranchers who use private grazing land."

**STATEMENT OF CHARLES M. CLUSEN, A WASHINGTON REPRESENTATIVE
OF THE SIERRA CLUB**

The Sierra Club and other conservation groups have pointed to the critical condition of the public lands due to improper use and overgrazing for many years as one of the most crucial public land management problems. At times some people have not believed the problem to exist. However, the Bureau of Senate Committee on Appropriations and the report entitled "Effects of Livestock Grazing on Wildlife, Watershed, Recreation and Other Resource Values Land Management has in the past few months prepared and released two reports which document this problem. While the declining condition of these lands was cited in the Public Land Statistics as far back as 1955, the "Range Condition Report" prepared by the Bureau of Land Management for the in Nevada have both documented the problem and brought great public attention to it. The "Range Condition Report" indicates that only 28 million acres or 17 per cent of the public grazing lands are in satisfactory or better condition. Some 135 million acres, or 83 per cent, are in some unsatisfactory category. In fact, 54 million acres, or 33 per cent, are in poor or bad condition—an area roughly the size of the entire state of Utah. Further analysis shows that 16 per cent of range conditions are declining with only 19 per cent improving. While the general rangeland condition reached its most critical level at about the time of the passage of the Taylor Grazing Act in the 1930's, subsequent management has only slowed the rate of decline and has only reversed it on the 16 per cent, or 25 million acres. According to the "Range Condition Report," the rangeland will continue to deteriorate—"projections

indicate that in 25 years productive capability could decrease by as much as 25 per cent . . . losses will be suffered in terms of erosion, water quality deterioration, downstream flooding, loss of wildlife and recreation values, and decline in basic productive capability."

Of tremendous concern to some people in the western states is "the possible loss of livestock grazing privileges resulting in local economic disruption" as a result of this land deterioration.

The report further states, "Stabilization of the basic soil mantle from which all renewable resources are permeated is of primary importance in management of surface use of the public lands. At present only slightly more than half of the public lands is in satisfactory erosion condition." The report goes on to say that the remainder, over 60 million acres, is in an "unacceptable condition because of depleted vegetation and excessive runoff." It is estimated that another 11 or 12 million acres will deteriorate to an unacceptable condition within 25 years.

One of the findings of the Nevada report states, "Full consideration was not given to wildlife in the subsequent development of range management plans and facilities." Another finding found that of 883 miles of streambank riparian habitat identified "livestock grazing is having an adverse effect." Furthermore, another finding states, "Protection and enhancement of wildlife, aesthetic, recreation and cultural values have not had sufficient emphasis in the past during range improvement construction." The discussion of this finding starts by saying, "Range improvement projects, such as fencing, water development, vegetative manipulation projects and roads, have had an adverse effect on wildlife, aesthetic, recreation and cultural values." When Director Berklund issued the first printing of the report, he stated that similar problems existed in other states as well.

Between 1968 and 1973 increases in the amount of unsatisfactory habitat occurred as follows:

	Percentage of unsatisfactory habitat	
	1968	1973
Big game.....	38	47
Small game.....	21	38
Waterfowl.....	14	37
Streams.....	30	41

Clearly poor grazing management has been especially severe on wildlife as these statistics show. There has been a very rapid decline in wildlife habitat. These statistics come from a paper entitled "The BLM's Wildlife Program Missions, Challenges, and Funding Levels."

This very poor situation exists in spite of the fact that BLM lands have, potentially, extremely significant wildlife values. Thirty-three endangered species are found on BLM lands. But less than one cent per acre is spent by BLM on all wildlife—the average area each BLM professional biologist must cover in seven million acres.

Because of these deplorable conditions we commend the Public Lands Subcommittee for examining this area. While the Sierra Club strongly supports the use of appropriate public lands for livestock grazing, it must be done as part of a well-balanced multiple use program under the principles of sustained yield and conservation. It is absolutely vital to improve the management of these lands—environmental quality and local economies are at stake. All uses of these lands in the long run are dependent on the health of the land.

I now would like to address the provisions of the grazing section of Subcommittee Print #1. The Sierra Club has no objection to the enactment of a statutory grazing fee formula, if resulting fees are comparable or greater than fees paid for the grazing of equivalent private rangeland. We do not believe that the federal government should be subsidizing those who happen to have federal grazing privileges. The fee formula in Subcommittee Print #1 likely will fluctuate widely with the rather varying price of beef. We oppose the inclusion of the beef price index in the fee formula.

We very strongly object to the mandatory issuance of 10-year permits and their automatic renewal. The program the BLM is embarked with of granting longer permits where the Allotment Management Plan is instituted we believe to be a good system. To do it before lands are changed over to the AMP program in any case will likely result in great confusion. Furthermore, the granting of a longer permit is an additional special privilege that now serves a critical role of being an incentive to livestock operators to cooperate with proper land management programs.

The automatic renewal of permits is in effect granting a 20-year permit and is untenable. This is granting a "right" to livestock operators which no other user of the public lands has. These are public lands, and no proprietary right should be granted to any private interest. We vigorously oppose this provision.

We also oppose the section on Grazing District Advisory Boards, Section 212, which exempts the district advisory boards from Section 14 of the Federal Advisory Committee Act. This provision would insure that these boards continue to be pressure lobbies for solely the livestock industry's concerns. We feel BLM has recently made significant progress in reforming these boards by better balancing the various public interests. If district boards are to continue to exist, they must reflect a balance of all the interests in the public lands from the local, regional, and national level.

We appreciate this opportunity to present our views.

Mr. MELCHER. We are glad to have you before the subcommittee again.

Mr. LANDSTROM. Thank you, Mr. Chairman.

If you have no objection, I would appreciate that the whole statement would be put in the record and I will cite several points.

Mr. MELCHER. Without objection, Mr. Landstrom's entire statement will be part of the record at this point.

Without objection, so ordered.

Please proceed.

[The prepared statement of Karl S. Landstrom follows:]

STATEMENT OF KARL S. LANDSTROM OF ARLINGTON, VA.

In accordance with the Subcommittee's announcement, my statement at this time will be confined mainly to the grazing resources aspects of the pending legislation. At a later time I shall ask permission to testify on other aspects, including the matter of the proposed "recordable disclaimers of interest in land". This subject is vital to the interests of a group of my clients whom I represented as legislative counsel before this Subcommittee last year when this legislation was being considered.

The fact that the legislation would leave much of the "Taylor Grazing Act" intact undoubtedly should be attributed to the wisdom of the author of that Act and his colleagues who were instrumental in enacting it into law. This phenomenon arises largely from the fact that the Act is not merely a "Grazing Act" but also a conservation Act. The Act included provisions which have operated reasonably well for certain non-grazing matters such as (1) protection of the basic land resources from deterioration; (2) withdrawal of district lands from the operation of the land disposal laws; (3) inventory and classification of the lands; (4) land sales and exchanges; and (5) continuation of public hunting and fishing.

The new legislation would declare new policies and principles for the BLM-administered lands. (Incidentally it is not clear whether the "O&C" and Coos Bay Wagon Road lands in Oregon would be included). However its repeal sections fail, I believe, to repeal all of the existing policy declarations that would be superseded. Among those existing statements is the "preamble" to the Taylor Act (the first few words of Sec. 1 of the Act). These words ("in order to promote the highest use of the public lands pending its final disposal") have caused untold controversy. My recommendation is that they be expressly repealed in the pending bill.

The pending legislation, wisely in my judgment, relies upon the standard concept of "multiple use management" as the keystone in its structure for public land administration. Grazing use is recognized, as it should be, as one of many purposes for which the system as a whole, or any planning unit therein, may be managed.

(I note in passing that in Committee Print No. 1, the definition of "multiple use"—which should read "multiple use management"—makes reference to "mineral resources of the National Forest System". This seems to be in error, inasmuch as the Print's definition of public lands to which the legislation will generally apply omits any coverage of any national forest lands).

May I now turn to the specific sections of the legislation which would apply to grazing.

The grazing fees section would arbitrarily set the so-called "fair market value" of grazing use on the far-flung and extremely varied BLM range lands at a price, not less than \$2 per animal unit month, to be fixed according to a price-index adjustment upon a base consisting of the 1966 valuation established in the Interior-Agriculture grazing fee study. I say that any such legislation would amount to a prostitution of the term "fair market value." I say this for two main reasons.

The first reason is that "fair market value"—at least in the professional sense in the appraisal profession—means a value fixed professionally, based on consideration of the most recent actual market transactions which are representative of the value being appraised. The 1966 survey is too far out-of-date to satisfy this criterion and its obsolete character cannot be compensated for by the proposed system of adjustment.

The second reason is that "fair market value" does or should refer to valuations which take regional, district, local or individual differences of value into account. No single grazing fee, established in Washington, D.C. for nationwide application can possibly meet this very essential criterion.

My advice is to amend the grazing fees sections so as to require that the charges to be collected shall be set professionally by qualified appraisers at periodic intervals, based on market evidence of value under grazing situations which are similar to those for which the appraisals are being made. I have long believed that, at least for some situations, BLM should be authorized and directed to enter into long-term grazing contracts and that the level of the grazing fees should be subject to negotiation, after appraisal, along with the other elements in the negotiation of the grazing contract. Only in this way can the grazing management system be adapted to fit the vastly differing circumstances which are found upon the lands, rather than attempting to adapt the actual situations on the land to some preconceived and arbitrary formula enunciated in Washington.

The grazing fee section also would earmark 50 pct. of the grazing receipts to be spent for range rehabilitation, protection and improvement. I believe that the existing arrangement under which a portion of the grazing receipts is treated as a "use fee" and another portion is treated as a "range improvement fee" is derived from a faulty concept of governmental finance. The basic idea seems to have been that by earmarking some of the receipts, such receipts can be guaranteed to be used for the designated purposes as an extension or enlargement of the base rate at which such purpose theretofore had been or otherwise would be financed. My experience and observation is, that all too often the earmarked funds have amounted to a ceiling on the over-all rate of spending for the particular purpose. All too often the purpose supposedly favored with the earmarked funds ends up with less over-all funds than would otherwise be the case. At least the existence of earmarked funds complicates the accounting for funds, and, much more importantly, the management and budgeting processes.

I would rather see all grazing receipts go into the general Treasury funds and rely upon the modernized budgeting processes in which the Congress will now play a larger and perhaps predominant part.

One of the grazing sections of the Print provides limits on the duration of grazing permits and leases. These proposed limits, as in the case of the fees, would apply to national forest lands as well as BLM lands. The language wisely requires that any permit or lease incorporate an allotment management plan if one is available. It is also wise that the agencies are to be authorized to cancel, suspend or modify a grazing permit or lease for cause.

In respect to the course of events that will be followed in case the grazing use must be terminated in order to accommodate some other use, including title disposal, the language of the Print seems to be unclear. Specifically, it is not clear—at least not to me—whether the compensation to be paid to the permittee is to be limited to the market value of his loss of interest in authorized permanent improvements which he has constructed, or whether it shall also include the market value of the loss of the grazing use. If it is to include only the former—loss of improvements—then I heartily endorse the proposal, as I have similar proposals going back at least to 1961. (As the Subcommittee knows, a provision requiring a new permittee to reimburse the former permittee for improvements, in case of a sale of base property, has been in the Taylor Act right along; and the Department, by regulation, has extended this same principle to cases where usable grazing improvements pass to the title of homesteaders or others who acquire title to public lands).

If it is the intention of the Print to allow payments for loss of grazing use, I oppose such intention. The main reason for my opposition is that under the law and the regulations the grazing use has been subject to termination “for a higher use” at all times—and this fact has been acknowledged repeatedly by leaders of the grazing industry. Any expectation that the contrary was the case, or that the Government would or should reimburse the user in case of such termination, was and is, in my judgment, mainly wishful thinking which is not justified in the circumstances. Consequently I believe that the use of Federal funds for this purpose is not warranted.

The better solution to this problem of termination, as well as to the grazing fee question, is as I have indicated above—that is, to authorize and direct the Departments, wherever feasible, to enter into long-term negotiated grazing contracts which are binding upon the Government as well as upon the grazing user. Under such a contract, the terms would provide for payment of damages by the Government in case of premature termination, without cause. To be sure, such a system of contracts might not fit all of the highly varied grazing situations. But I believe it would fit at least some of them, and I believe the time is long since come to give it a trial.

Turning finally to the advisory board question, I have a great deal of respect for the Taylor Act style of district board. It has been successful and it has historical importance. However it was based on the limited concept of the grazing use of the public lands—not on the more modern or current concept of multiple use management. I am convinced that the basic advisory organizational unit at each level—district, State, regional or national—must be representative of all important land uses. There can be no objection of which I am aware to setting up subgroups within the basic boards, such as for grazing; and I offer this idea as a way to proceed in the Committee Print.

Before closing, I have a few remarks regarding the current controversy as to the proper bureau-level administration of several of the game ranges—the Kofa Game Range, the Charles Sheldon Antelope Range, and the Charles M. Russell National Wildlife Range. I have visited the Russell area, and I have some background of personal experience concerning its management.

I recall that a campaign was under way about 1962 to transfer the grazing management of the Russell Range from BLM to the Bureau of Sport Fisheries and Wildlife. Some vicious and unfounded charges were made against some of the BLM offices and personnel in Montana. I was personally attacked by some of the Wildlife Service personnel and their supporters when I pointed out the falsity of some of the charges.

Secretary Morton and his staff have made a good case for consolidation and simplification of administration without essential change in legal status or policy of management. About the only substantive argument that has been made on the other side is that BLM might not protect the wildlife resources because its people have not been “particularly noted for zealously conserving and protecting wildlife.” I would say this *ad-hominem* type of argument is inapplicable now as it was in 1962. The BLM management people by and large come from educational backgrounds similar to those of the FWS people. Many of them belong to the same professional organizations. I know of no valid reason they cannot carry out the laws, regulations and policies effectively and faithfully.

Demand has been made that the reorganization be withheld pending the issuance of an environmental impact statement. This seem far-fetched inasmuch as the impact on the environment should be nil. But we know that the environmental impact requirement of NEPA is being generally perverted.

Thank you, Mr. Chairman, for considering my statement.

STATEMENT OF KARL S. LANDSTROM

Mr. LANDSTROM. I have seven points here, and I will list them and say a few words. The statement speaks for itself on it.

The first really is that I would like to see several words in the Taylor Grazing Act repealed. That is the so-called preamble to the act. I do not think your bill does that. As I say, those 15 words have caused untoward controversy. They would be totally superceded by the policy declarations you are making. I think that you ought to, therefore, do that. There should be a search of other like obsolete policy statement in other statutes. So to make sure that we do not have a conflict in a statutory statement of policy.

I made a study along those lines on the subject of mineral resources a couple of years ago for the Mineral Policy Commission and found repeatedly that there had been new declarations piled on the top of old ones without the efforts to repeal the old ones, and I draw that to your attention.

The second is I think it is very wise to rely upon the standard concept of multiple-use management. I have to differ with my friend, George Alderson. I think that concept should and does include all resources, both mineral and nonmineral, and it is proper that they be integrated.

The third point on grazing fees, I think that it would be wrong to use the term "fair market value" as the committee print in last year's bill does, and perverted, or, shall I say, abused it in making it into an arbitrary finding by the Congress, as I say, or by the administrator on a uniform basis across the country. I just do not think that that can be so. I think a fair market value must be individually appraised by a professional appraiser to take into account all the differences. I realize that is a pretty large order.

I just feel that you cannot have a single rule for all the conditions in West and have it be fair and reputable.

The third point is on the allocation of the grazing receipts. On page 3 in my statement about halfway down, I think that it would be better not to earmark any of these receipts for any particular purpose. I think this is something sort of fundamental with me, that the Government, generally, should not form a practice of earmarking any of its receipts. I think that it would be much better, from a budgetary and financial management viewpoint, to have the receipts come into the Treasury. I see that the Congress is now making more control of the budgeting and financial side, and one of the benefits—

Mr. STEIGER. Excuse me, I do not mean to interrupt.

What was the first evidence of that?

Mr. LANDSTROM. It is in the future. It is in process. It is supposed to work that way, and if it does work that way, one of the benefits should be that we can do away with the notion of earmarking receipts for certain purposes which prevents the operation of Congress in managing the financial affairs of the Government.

My experience is, when you earmark funds for something, you do not really help it get above its preexisting base, or the base that would otherwise be established. What you would do is put a ceiling on the amount that is available, and you prevent the allocation of other funds that should be made available because they will point to this ceiling that you have already established. This was certainly true of the grazing improvement fund.

The fourth point has to do with tenure. The bill is not too clear to me; I do not know whether the compensation would be only for the loss of the rancher's contribution to range improvements at its fair value, or whether it would go ahead and give compensation for the loss of the use privilege. As far as compensation for improvements, I am all for that and have been for years.

When I was director of BLM in 1961-1963, we sponsored a proposal to do exactly that, which was not passed by the Congress. Now, it comes to compensation for loss of use; I am opposed to that because I do not think there is any basis of that, inasmuch as the laws, alone, have provided that there can be a termination of the privilege at any time for so-called high use and the leaders in the grazing industry have always recognized this.

It would be kind of wishful thinking to expect expectations of a war emergency or some drastic change of that type, totally unforeseen, to give such compensation.

So the solution I suggest perhaps goes even beyond Congressman Steiger's idea of the 10-year permit. I have preferred for many years—and I have said so when I used to be Bureau Director—a firm grazing contract. I am saying along the lines, much like a mineral lease, or any other kind of commercial use you can think of, of Federal property where we have a firm contract, which has a definite period of use. I think 20 or 30 years, not 10; because I think you cannot properly manage a ranch on even a 10-year schedule. It must be longer than that to provide adequate management responsibility, and if there is a premature cancellation of a contract, of course, you should be compensated for the amount that is owed, and the fee, I suggest, should be negotiated as part of the long-term contract.

Turning now to the advisory board's question, I offer kind of a compromise here, which is that you have basically a multiple-use advisory board at each level, but that you allow subgroups or subcommittees, so to speak, one of those may specialize on grazing. That might be a way to get around the dilemma that is facing you.

Now, the last page of my statement does deal with this change of administration of these various game rangers that has been alluded to already this morning. Again, I differ with my good friend, George Alderson, completely. I had some personal experience with this sort of thing, because I was victimized when I was Director of the Bureau in 1962, and I was personally attacked along with BLM personnel and some of subordinates in Montana who were managing grazing lands at that time on what I style an ad-hominem basis, and I suspect that there is a renewal of that same kind of argument, based upon some notion that people in one bureau, although they come from the same backgrounds, have had the same college training, belong to the

same professional societies, you could not tell them apart, really, like peas in a pod, but somehow, because they are in BLM, they are incompetent. I just reject that.

Furthermore, both bureaus are under the same Secretary, the same Secretariat, and I think are capable, either one of them, of performing the functions. So, I, therefore, support the proposal by Secretary Morton to consolidate and simplify the administration.

Thank you very much.

Mr. MELCHER. I respect your long years of experience in matters of government, particularly with the BLM. I am a little bit amazed to hear you say that as far as getting money for a specific purpose, you would rather rely on the ordinary budgeting process to provide that for you. My experience is very much contrary to that if it is for a purpose that is to benefit a geographic area without very many votes, and if it is for a purpose that is not readily understood by very many people, and, frankly, only a handful, a couple of handfuls of people from the House of Representatives.

I wonder why you would think, under the restraints that we have on finding appropriations, why you would feel confident that there would be appropriations for range improvements outside of the earmarking process?

Mr. LANDSTROM. I suppose it comes from my own experience testifying before the Appropriations Committees. There were times where it was pointed out to me that if we had the range improvement fund, that is all we were going to get, and we needed several more thousands, and it took representatives from Western States from both Houses to break that ice jam in 1968 and supersede it. Now, that you are going to have 50 percent or some such percentage of a much larger fund, you may raise it. I do not know the financial numbers. If you do, then, perhaps, you have it made. But perhaps my makeup is more fundamental than that. But I just do not believe in earmarking funds, generally.

Mr. MELCHER. Having lived in a sparsely populated county and in a large State and serving in the legislature, I long ago learned through my experience, that unless you put something down for your area, you did not get it in the House. That is still true in the Congress; if you want anything in this Nation, I do not think you will find it in the appropriations process, at least to the extent that we need it.

I do want to point out that it is the intention, that the bill is drafted that all the range improvements funds will be used for actual range improvements not for salaries, not for overhead, expenses, et cetera.

The gentleman from Oregon.

Mr. WEAVER. Yes, Mr. Landstrom, I would just like to point out, regarding your testimony, that the lands of Oregon are extricated from these provisions.

No further questions.

Mr. MELCHER. The gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman. Just one question.

I agree that the compensation for the unused portion of the lease is new ground, and I will stipulate to that. I note, on the other hand,

personally, that you are not opposed to new ground, per se. The rationale is not belief; it has some very real, I think, rationale for it; that is, in order to encourage the greatest financial involvement in range improvement and to make the stewardship fiscally feasible that this particular provision is a valuable one. As a practical matter, as you realize, it will only be invoked when the cancellation is for some unforeseen event. It will not be invoked if the cancellation is in violation of the permit.

So, as a practical matter, it is not going to be invoked very often, but it will give, of course, a whole spectrum of permits. It will encourage investment that might not be encouraged otherwise. So, in effect, it will do no harm and could do a great deal of good. At least, that is the thinking of the committee.

Mr. LANDSTROM. As I say, I will go along with it fully with the compensation for investment in range improvement.

Mr. STEIGER. I understand.

Mr. LANDSTROM. Because of certain reasons.

Mr. STEIGER. Thank you, Mr. Chairman.

Mr. MELCHER. The gentleman from Nevada.

Mr. SANTINI. No questions.

I would like to commend the gentleman for his keen interest and involvement in this subject of vital concern to all of us on the committee, and many pass from the administration into oblivion. You obviously are using your considerable talents in this area, and I appreciate it.

Mr. MELCHER. Anything but oblivion. You are very much in evidence, and we very much appreciate your testifying before us this morning. We look forward to hearing again from you when we take up other aspects.

Mr. LANDSTROM. Thank you, Mr. Chairman.

Mr. MELCHER. The subcommittee will adjourn until 10 a.m. tomorrow.

[Whereupon, at 12:15 p.m., the subcommittee recessed to reconvene at 10 a.m., March 25, 1975.]

PUBLIC LAND POLICY AND MANAGEMENT ACT OF 1975

TUESDAY, MARCH 25, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC LANDS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice at 10 a.m. in room 340, Cannon House Office Building, Hon. John Melcher presiding.

Present: Representative Melcher (presiding), Johnson, Santini, Udall, and Young.

Also present: James Rock and Irving Senzel.

Mr. MELCHER. The subcommittee will come to order. We are going to continue our public hearings on the Land Management Act.

We now have before us H.R. 5224 introduced by our colleague on the full committee, Mr. Ruppe, which I understand is the administration bill Mr. Ruppe introduce by request. Of course, we are also working off of subcommittee print No. 1.

Might I ask, are there more copies of subcommittee print No. 1?

Mr. JOHNSON. I think there are about 50. We ordered some more but they are not back yet.

Mr. MELCHER. There are 50 available and there will be more coming?

Mr. JOHNSON. That is right.

[H.R. 5224 and subcommittee print No. 1, follow:]

(87)

94TH CONGRESS
1ST SESSION

H. R. 5224

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 1975

Mr. RUPPE (by request) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To provide for the management, protection, and development of the national resource lands, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the “National Resource Lands
- 4 Management Act”.

TABLE OF CONTENTS

- Sec. 2. Definitions.
- Sec. 3. Declaration of policy.
- Sec. 4. Rules and regulations.
- Sec. 5. Public participation.
- Sec. 6. Advisory boards and committees.
- Sec. 7. Annual report.
- Sec. 8. Director.
- Sec. 9. Appropriations.

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TITLE I—GENERAL MANAGEMENT AUTHORITY

- Sec. 101. Management.
- Sec. 102. Inventory.
- Sec. 103. Land use plans.

TITLE II—CONVEYANCE AND ACQUISITION AUTHORITIES

- Sec. 201. Authority to sell.
- Sec. 202. Disposal criteria.
- Sec. 203. Sales at fair market value.
- Sec. 204. Size of tracts.
- Sec. 205. Competitive bidding procedures.
- Sec. 206. Right to refuse or reject offer of purchase.
- Sec. 207. Reservation of mineral interests.
- Sec. 208. Conveyance of reserved mineral interests.
- Sec. 209. Terms of patent.
- Sec. 210. Notification to States.
- Sec. 211. Authority to issue and correct documents of conveyance.
- Sec. 212. Recordable disclaimers of interest in land.
- Sec. 213. Acquisition of land.

TITLE III—MANAGEMENT IMPLEMENTING AUTHORITY

- Sec. 301. Studies, cooperative agreements, and contributions.
- Sec. 302. Service charges, reimbursement payments, and excess payments.
- Sec. 303. Working capital fund.
- Sec. 304. Deposits and forfeitures.
- Sec. 305. Contracts and cadastral survey operations and resource protection.
- Sec. 306. Unauthorized use.
- Sec. 307. Enforcement authority.
- Sec. 308. Cooperation with State and local law enforcement agencies.
- Sec. 309. Recordation.

TITLE IV—AUTHORITY TO GRANT RIGHTS-OF-WAY

- Sec. 401. Authorization to grant rights-of-way.
- Sec. 402. Right-of-way corridors.
- Sec. 403. General provisions.
- Sec. 404. Terms and conditions.
- Sec. 405. Suspension or termination of right-of-way.
- Sec. 406. Rights-of-way for Federal agencies.
- Sec. 407. Conveyance of lands.
- Sec. 408. Existing rights-of-way.
- Sec. 409. State standards.
- Sec. 410. Effect on other laws.
- Sec. 411. Applicant before other Federal agencies.

TITLE V—CONSTRUCTION OF LAW, PRESERVATION OF VALID EXISTING RIGHTS, AND REPEAL OF LAWS

- Sec. 501. Construction of law.
- Sec. 502. Valid existing rights.
- Sec. 503. Repeal of laws relating to disposal of national resource lands.
- Sec. 504. Repeal of laws relating to administration of national resource lands.
- Sec. 505. Repeal of laws relating to rights-of-way.

DEFINITIONS

SEC. 2. As used in this Act:

(a) "The Secretary" means the Secretary of the Interior.

(b) "National resource lands" means all lands and interests in lands (including the renewable and nonrenewable resources thereof) now or hereafter administered by the Secretary through the Bureau of Land Management, except the Outer Continental Shelf.

(c) "Multiple use" means the management of the national resource lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, and harmonious and coordinated management of the various resource without undue impairment of the productivity of the land and the quality of the environment, with consideration being given to the relative values of the resources and not necessarily

1 to the combination of uses that will give the greatest dollar
2 return or the greatest unit output.

3 (d) "Sustained yield" means the achievement and main-
4 tenance in perpetuity of a high-level annual or regular pe-
5 riodic output of the various renewable resources of land with-
6 out permanent impairment of the quality and productivity of
7 the land or its environmental values.

8 (e) "Areas of critical environmental concern" means
9 areas within the national resource lands where special man-
10 agement attention is required when such areas are developed
11 or used to protect, or where no development is required to
12 prevent irreparable damage to, important historic, cultural,
13 or scenic values, or natural systems or processes, or life and
14 safety as a result of natural hazards.

15 (f) "Right-of-way" means an easement, lease, permit,
16 or license to occupy, use, or traverse national resource lands
17 granted for the purposes listed in title IV of this Act.

18 (g) "Holder" means any State or local governmental
19 entity or agency, individual, partnership, corporation, asso-
20 ciation, or other business entity receiving or using a right-of-
21 way under title IV of this Act.

22 DECLARATION OF POLICY

23 SEC. 3. (a) Congress hereby declares that—

24 (1) the national resource lands are a vital national
25 asset containing a wide variety of natural resource
26 values;

1 (2) sound, long-term management of the national
2 resource lands is vital to the maintenance of a livable
3 environment and essential to the well-being of the Amer-
4 ican people;

5 (3) the national interest will be best realized if the
6 national resource lands and their resources are periodi-
7 cally and systematically inventoried and their present
8 and future use is projected through a land use planning
9 process coordinated with other Federal, State, and local
10 planning efforts; and

11 (4) except where disposal of particular tracts is
12 made in accordance with title II, and other applicable
13 laws, the national interest will be best served by retain-
14 ing the national resource lands in Federal ownership.

15 (b) Congress hereby directs that the Secretary shall
16 manage the national resource lands under principles of mul-
17 tiple use and sustained yield in a manner which will, using
18 all practicable means and measures, assure consideration of:

19 (i) the environmental quality of such lands to assure their
20 continued value for present and future generations; (ii) such
21 uses as provision of food and habitat for wildlife, fish, and
22 domestic animals, minerals, materials, and energy produc-
23 tion, supplying the products of trees and plants, human
24 occupancy and use, and various forms of outdoor recreation,
25 or other uses; (iii) scientific, scenic, historical, archeologi-

1 cal, natural ecological, air and atmospheric, water resource,
2 and other public values; (iv) continuation of certain areas
3 in their natural condition, and to assure; (v) evaluating of
4 various demands on such lands in light of national goals;
5 (vi) payment of fair market value by users of such lands
6 except as otherwise provided by law; (vii) opportunity for
7 the public to participate in decisionmaking concerning such
8 lands; and (viii) consultation, cooperation, and, to the maxi-
9 mum extent practicable, coordination of his activities with
10 other interested Federal agencies.

11 RULES AND REGULATIONS

12 SEC. 4. The Secretary is authorized to promulgate such
13 rules and regulations as he deems necessary to carry out the
14 purposes of this Act. The promulgation of such rules and
15 regulations shall be governed by the Administrative Pro-
16 cedure Act (5 U.S.C. 553). Prior to the promulgation of
17 such rules and regulations, the national resource lands shall be
18 administered under existing rules and regulations concern-
19 ing such lands.

20 PUBLIC PARTICIPATION

21 SEC. 5. In exercising his authorities under this Act, the
22 Secretary, by regulation, shall establish procedures, includ-
23 ing public hearings where appropriate, to give the Federal,
24 State, and local governments and the public adequate notice
25 and an opportunity to comment upon the formulation of

1 standards and criteria for the preparation and execution of
2 plans and programs concerning, and in the management of,
3 the national resource lands.

4 ADVISORY BOARDS AND COMMITTEES

5 SEC. 6. In providing for public participation in planning
6 and programing for the national resource lands, the Secre-
7 tary, pursuant to the Federal Advisory Committee Act (86
8 Stat. 770) and other applicable law, may establish and
9 consult such advisory boards and committees as he deems
10 necessary to secure full information and advice on the execu-
11 tion of his responsibilities. The membership of such boards
12 and committees shall be representative of a cross section of
13 groups interested in the management of the national resource
14 lands and the various types of use and enjoyment of such
15 lands.

16 ANNUAL REPORT

17 SEC. 7. The Secretary shall prepare an annual report
18 which he shall make available to the public and submit to
19 Congress no later than one hundred and twenty days after
20 the close of each fiscal year. The report shall describe, in
21 appropriate detail, activities relating or pursuant to this Act
22 for the fiscal year just ended, any problems which may have
23 arisen concerning such activities, and other pertinent infor-
24 mation which will assist the accomplishment of the provisions
25 and purposes of this Act. The report shall contain a detailed

1 list and description of all transfers of national resource lands
2 out of Federal ownership for the fiscal year just ended. It
3 shall include such tables, graphs, and illustrations as will
4 adequately reflect the fiscal year's activities, historical trends,
5 and future projections relating to the national resource lands.

6

DIRECTOR

7 SEC. 8. Appointments made on or after the date of the
8 enactment of this Act to the position of the Director of the
9 Bureau of Land Management, within the Department of the
10 Interior, shall be made by the President, by and with the
11 advice and consent of the Senate.

12

APPROPRIATIONS

13 SEC. 9. There is hereby authorized to be appropriated
14 such sums as are necessary to carry out the purposes and
15 provisions of this Act.

16 **TITLE I—GENERAL MANAGEMENT AUTHORITY**

17

MANAGEMENT

18 SEC. 101. The Secretary shall manage the national re-
19 source lands in accordance with the policies and procedures
20 of this Act and with any land use plans which he has pre-
21 pared, pursuant to section 103 of this Act, except to the
22 extent that other applicable law provides otherwise. Such
23 management shall include—

24 (1) regulating, through permits, licenses, leases, or
25 such other instruments as the Secretary deems appro-

1 piate, the use, occupancy, or development of the na-
2 tional resource lands not provided for by other laws:
3 *Provided, however,* That no provision of this Act shall
4 be construed as authorizing the Secretary to require any
5 Federal permit to hunt or fish on the national resource
6 lands;

7 (2) requiring appropriate land reclamation as a
8 condition of use, and requiring performance bonds or
9 other security guaranteeing such reclamation in a timely
10 manner from any person permitted to engage in an
11 extractive or other activity likely to entail significant
12 disturbance to or alteration of the national resource
13 lands;

14 (3) the prompt development of regulations for the
15 protection of areas of critical environment concern.

16 INVENTORY

17 SEC. 102. (a) The Secretary shall prepare and main-
18 tain on a continuing basis an inventory of all national re-
19 source lands, and their resource and other values (including
20 outdoor recreation and scenic values) giving priority to
21 areas of critical environmental concern. Areas containing
22 wilderness characteristics as described in section 2 (c) (1),
23 (2), and (4) of the Act of September 3, 1964 (78 Stat.
24 890) shall be identified: *Provided,* That such areas be com-
25 prised of fifty thousand contiguous, roadless acres or more.

1 The inventory shall be kept current so as to reflect changes
2 in conditions and in identifications of resource and other
3 values. The preparation and maintenance of such inventory
4 or the identification of such areas shall not, of itself, change
5 or prevent change in the management or use of national
6 resource lands.

7 (b) The Secretary, where he determines it to be ap-
8 propriate, may provide (i) means of public identification
9 of national resource lands, including signs and maps, and
10 (ii) State and local governments with data from the in-
11 ventory for the purpose of planning and regulating the
12 uses of non-Federal lands in the proximity of national
13 resource lands.

14 LAND USE PLANS

15 SEC. 103. (a) The Secretary shall, with public par-
16 ticipation, develop, maintain, and, when appropriate, re-
17 vise land use plans for the national resource lands consist-
18 ent with the terms and conditions of this Act and coor-
19 dinated so far as he finds feasible and proper, or as may
20 be required by law.

21 (b) In the development and maintenance of land use
22 plans, the Secretary shall:

23 (1) use a systematic interdisciplinary approach to
24 achieve integrated consideration of physical, biological,
25 economic, and social sciences;

1 (2) give high priority to the designation and protec-
2 tion of areas of critical environmental concern;

3 (3) rely, to the extent it is available, on the inven-
4 tory of the national resource lands, their resources, and
5 other values;

6 (4) consider present and potential uses of the lands;

7 (5) consider the relative values involved and the
8 availability of alternative means (including recycling)
9 and sites for realization of those values;

10 (6) weigh long-term public benefits; and

11 (7) consider the requirements of applicable pollu-
12 tion control laws including State or Federal air or water
13 quality standards, noise standards, and implementation
14 plans.

15 (c) Any classification of national resource lands in effect
16 on the date of enactment of this Act is subject to review in
17 the land use planning process and such lands are subject to
18 inclusion in land use plans pursuant to this section.

19 (d) Wherever any proposed change in the classification
20 of, or permitted uses on, any national resource lands would
21 affect authorization for use of such lands, persons holding
22 leases, licenses, or permits concerning the use to be affected
23 shall be given written notice by the Secretary of such pro-
24 posed change at least sixty days before it is put into effect.

1 (e) Areas identified pursuant to section 102 as having
2 wilderness characteristics shall be reviewed pursuant to the
3 procedures set forth in subsections 3 (c) and (d) of the Act
4 of September 3, 1964 (78 Stat. 892-893). The review pro-
5 cedures shall include mineral resource surveys by the United
6 States Geological Survey and the Bureau of Mines: *Provided,*
7 *however,* That such review shall not, of itself either change
8 or prevent change in the management or use of the national
9 resource lands.

10 TITLE II—CONVEYANCE AND ACQUISITION 11 AUTHORITIES

12 AUTHORITY TO SELL

13 SEC. 201. Except as otherwise provided by law, and
14 subject to the requirements of section 3 of this Act, the Sec-
15 retary is authorized to sell national resource lands. The
16 national resource lands may be sold if the Secretary, in
17 accordance with the guidelines he has established for sale
18 of national resource lands and after preparation, pursuant
19 to section 103 of this Act, of a land use plan which includes
20 any tract of such lands identified for sale, determines that the
21 sale of such tract will not cause needless degradation of the
22 environment and meets the disposal criteria of section 202
23 of this Act.

24 DISPOSAL CRITERIA

25 SEC. 202. (a) A tract of national resource lands may be
26 transferred out of Federal ownership under this Act only

1 where, as a result of land use planning required under sec-
2 tion 103, the Secretary determines that—

3 (1) such tract of national resource lands, because of
4 its location and other characteristics, is difficult to man-
5 age as part of the national resource lands and is not
6 suitable for management by another Federal agency; or

7 (2) such tract of national resource lands was ac-
8 quired for a specific purpose and the tract is no longer
9 required for that or any other Federal purpose; or

10 (3) disposal of such tract of national resource lands
11 will serve objectives which cannot be achieved pru-
12 dently or feasibly on land other than such tract and
13 which outweigh public objectives and values which
14 would be served by maintaining such tract in Federal
15 ownership.

16 **SALES AT FAIR MARKET VALUE**

17 **SEC. 203.** Sales of national resource lands under this
18 Act shall be at not less than the appraised fair market value
19 as determined by the Secretary.

20 **SIZE OF TRACTS**

21 **SEC. 204.** The Secretary shall determine and establish
22 the size of tracts of national resource lands to be sold on the
23 basis of the land use capabilities and development require-
24 ments of the lands.

1 **COMPETITIVE BIDDING PROCEDURES**

2 **SEC. 205.** Except as to sales under section 208 hereof,
3 sales of national resource lands under this Act shall be con-
4 ducted under competitive bidding procedures to be estab-
5 lished by the Secretary. However, where the Secretary deter-
6 mines it necessary and proper (i) to assure equitable dis-
7 tribution among purchasers of national resource lands, or
8 (ii) to recognize equitable considerations or public policies,
9 including but not limited to a preference to users, he is au-
10 thorized to sell national resource lands with modified com-
11 petitive bidding or without competitive bidding.

12 **RIGHT TO REFUSE OR REJECT OFFER OF PURCHASE**

13 **SEC. 206.** Until the Secretary has accepted an offer to
14 purchase, he may refuse to accept any offer or may with-
15 draw any land or interest in land from sale under this Act
16 when he determines that consummation of the sale would
17 not be consistent with this Act or other applicable law. The
18 Secretary shall accept or reject, in writing, any offer to pur-
19 chase, made through competitive bid at his invitation, no
20 later than thirty days after the submission of such offer.

21 **RESERVATION OF MINERAL INTERESTS**

22 **SEC. 207.** Where the United States owns a mineral
23 estate, all conveyances of title issued by the Secretary under
24 this Act, except conveyances under the exchange authority
25 provided in section 213, shall reserve to the United States all

1 minerals in the lands, together with the right to prospect for,
2 mine, and remove the minerals under applicable law and
3 such regulations as the Secretary may prescribe: *Provided,*
4 That, where reservation of the mineral interest to the United
5 States would interfere with or preclude the appropriate use
6 or development of such land, the Secretary may convey the
7 minerals in the conveyance of title in accordance with the
8 provisions of section 208 of this Act.

9 CONVEYANCE OF RESERVED MINERAL INTEREST

10 SEC. 208. (a) The Secretary may convey mineral
11 interests owned by the United States where the surface is in
12 non-Federal ownership, regardless of which Federal agency
13 may have administered the surface, if he finds (1) that there
14 are no mineral values in the land, or (2) that the reservation
15 of the mineral rights in the United States is interfering with
16 or precluding appropriate nonmineral development of the
17 land and that such development is a more beneficial use of
18 the land than mineral development.

19 (b) Conveyance of mineral interests pursuant to this
20 section shall be made only to the record owner of the surface
21 upon payment of administrative costs and the fair market
22 value of the interests being conveyed.

23 (c) Before considering an application for conveyance of
24 mineral interests pursuant to this section, the Secretary shall
25 require the deposit of a sum of money which he deems suffi-

1 cient to cover administrative costs including, but not limited
2 to, costs of conducting an exploratory program to determine
3 the character of the mineral deposits in the land, evaluating
4 the data obtained under the exploratory program to deter-
5 mine the fair market value of the mineral interests to be con-
6 veyed, and preparing and issuing the documents of con-
7 veyance. If the administrative costs exceed the deposit, the
8 applicant shall pay the outstanding amount; and if the de-
9 posit exceeds the administrative costs, the applicant shall be
10 given a credit for or refund of the excess.

11 (d) Moneys paid to the Secretary for administrative
12 costs pursuant to subsection (d) of this section shall be paid
13 to the agency which rendered the service and deposited to the
14 appropriation then current.

15 **TERMS OF PATENT**

16 **SEC. 209.** The Secretary shall insert in any patent or
17 other document of conveyance he issues under this Act such
18 terms, covenants, conditions, and reservations as he deems
19 necessary to insure proper land use and protection of the
20 public interest.

21 **NOTIFICATION TO STATES**

22 **SEC. 210.** At least ninety days prior to offering for sale
23 or otherwise conveying national resource lands under this
24 Act, the Secretary shall notify the Governor of the State
25 within which such lands are located and the head of the gov-

erning body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which such lands are located, in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning, the use of such lands prior to such conveyance.

**AUTHORITY TO ISSUE AND CORRECT DOCUMENTS OF
CONVEYANCE**

SEC. 211. Consistent with his authority to dispose of national resource lands, the Secretary is authorized to issue deeds, patents, and other indicia of title, and to correct such documents where necessary. In addition, the Secretary is authorized to make corrections on any documents of conveyance which have heretofore been issued on lands which would, at the time of their conveyance, have met the description of national resource lands.

RECORDABLE DISCLAIMERS OF INTEREST IN LAND

SEC. 212. (a) After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law; or (2) the

1 lands lying between the meander line shown on a plat of
2 survey approved by the Bureau of Land Management or its
3 predecessors and the actual shoreline of a body of water
4 are not lands of the United States; or (3) accreted, relicted,
5 or avulsed lands are not lands of the United States.

6 (b) No document of disclaimer shall be issued pursuant
7 to this title unless the applicant therefor has filed with the
8 Secretary an application in writing and notice of such appli-
9 cation setting forth the grounds supporting such application
10 has been published in the Federal Register at least ninety
11 days preceding the issuance of such disclaimer and until
12 the applicant therefor has paid to the Secretary the admin-
13 istrative cost of issuing the disclaimer as determined by the
14 Secretary. All receipts shall be credited to the appropriation
15 from which expended.

16 (c) Issuance of a document of disclaimer by the Sec-
17 retary pursuant to the provisions of this section and regula-
18 tions promulgated hereunder shall have the same effect as a
19 quitclaim deed from the United States.

20 **ACQUISITION OF LAND**

21 SEC. 213. (a) The Secretary is authorized to acquire, by
22 purchase, exchange, donation, or otherwise, lands or inter-
23 ests therein where necessary for proper management of the
24 national resource lands.

1 (b) Acquisitions pursuant to this Act shall be con-
2 sistent with applicable land use plans prepared by the Sec-
3 retary under section 103 of this Act.

4 (c) In exercising the exchange authority granted by
5 subsection (a) of this section, the Secretary may accept title
6 to any non-Federal land or interests therein and in exchange
7 therefore he may convey to the grantor of such land or in-
8 terests any national resource lands or interests therein which,
9 under section 202 of this Act, he finds proper for transfer out
10 of Federal ownership and which are located in the same
11 State as the non-Federal land to be acquired. The values of
12 the lands so exchanged either shall be equal, or if they are
13 not equal, shall be equalized by the payment of money to the
14 grantor or to the Secretary as the circumstances require,
15 provided that payment does not exceed 20 per centum of the
16 total value of the lands transferred out of Federal ownership.

17 (d) Lands acquired by exchange under this section or
18 section 301 (c) which are within the boundaries of units of
19 the National Forest System may be transferred to the Secre-
20 tary of Agriculture for administration as part of, and in ac-
21 cordance with laws, rules, and regulations applicable to, the
22 National Forest System. Lands acquired by exchange under
23 this section or section 301 (c) which are within the boun-
24 daries of national park, wildlife refuge, wild and scenic
25 rivers, trails, or any other system established by Act of Con-

1 gress may be transferred to the appropriate agency head for
2 administration as part of, and in accordance with the laws,
3 rules, and regulations applicable to, such system.

4 (e) Lands and interests in lands acquired pursuant to
5 this section or section 301 (c) shall, upon acceptance of title,
6 become national resource lands, and, for the administration
7 of public land laws not repealed by this Act, shall become
8 public lands. If such acquired lands or interests in lands are
9 located within the exterior boundaries of a grazing district
10 established pursuant to section 1 of the Taylor Grazing Act
11 (48 Stat. 1269), as amended, they shall become a part of
12 that district.

13 **TITLE III—MANAGEMENT IMPLEMENTING** 14 **AUTHORITY**

15 **STUDIES, COOPERATIVE AGREEMENTS, AND CONTRIBUTIONS**

16 SEC. 301. (a) The Secretary may conduct investiga-
17 tions, studies, and experiments, on his own initiative or in
18 cooperation with others, involving the management, protec-
19 tion, development, acquisition, and conveying of the national
20 resource lands.

21 (b) The Secretary may enter into contracts or coopera-
22 tive agreements involving the management, protection, devel-
23 opment, acquisition, and conveying of the national resource
24 lands.

1 (c) The Secretary may accept contributions or dona-
2 tions of money, services, and property, real, personal, or
3 mixed, for the management, protection, development, acquisi-
4 tion, and conveying of the national resource lands, including
5 the acquisition of rights-of-way for such purposes. He may
6 accept contributions for cadastral surveying performed on
7 federally controlled or intermingled lands. Moneys received
8 hereunder shall be credited to a separate account in the
9 Treasury and are hereby appropriated and made available
10 until expended, as the Secretary may direct, for payment
11 of expenses incident to the function, toward the administra-
12 tion of which the contributions were made, and for refunds to
13 depositors of amounts contributed by them in specific in-
14 stances where contributions are in excess of their share of the
15 cost.

16 **SERVICE CHARGES, REIMBURSEMENT PAYMENTS, AND**
17 **EXCESS PAYMENTS**

18 **SEC. 302.** (a) Notwithstanding any other provision of
19 law, the Secretary may establish filing fees, service fees, and
20 charges, and commissions with respect to applications and
21 other documents relating to national resource lands and may
22 change and abolish such fees, charges, and commissions.

23 (b) The Secretary is authorized to require a deposit of
24 any payments intended to reimburse the United States for
25 extraordinary costs with respect to applications and other

1 documents relating to national resource lands. The moneys
2 received for extraordinary costs under this subsection shall
3 be deposited with the Treasury in a special account and are
4 hereby appropriated and made available until expended as
5 the Secretary directs. As used in this subsection, "extraor-
6 dinary costs" include but are not limited to the costs of spe-
7 cial studies; environmental impact statements; monitoring
8 construction, operation, maintenance, and termination of any
9 authorized facility; or other special activities.

10 (c) In any case where it shall appear to the satisfaction
11 of the Secretary that any person has made a payment under
12 any statute relating to the sale, lease, use, or other disposi-
13 tion of the national resource lands which is not required or is
14 in excess of the amount required by applicable law and the
15 regulations issued by the Secretary, the Secretary, upon
16 application or otherwise, may cause a refund to be made
17 from applicable funds. •

18 WORKING CAPITAL FUND

19 SEC. 303. (a) There is hereby established a working
20 capital fund for the management of national resource lands.
21 This fund shall be available without fiscal year limitation for
22 expenses necessary for furnishing, in accordance with the
23 Federal Property and Administrative Services Act of 1949
24 (63 Stat. 377), as amended, and regulations promulgated
25 thereunder, supplies and equipment services in support of

23

1 Bureau of Land Management programs, including but not
2 limited to, the purchase or construction of storage facilities,
3 equipment yards, and related improvements and the pur-
4 chase, lease, or rent of motor vehicles, aircraft, heavy equip-
5 ment, and fire control and other resource management
6 equipment within the limitations set forth in appropriations
7 made to the Bureau of Land Management.

8 (b) The initial capital of the fund shall consist of appro-
9 priations made for that purpose together with the fair and
10 reasonable value at the fund's inception of the inventories,
11 equipment, receivables, and other assets, less the liabilities,
12 transferred to the fund. The Secretary is authorized to make
13 such subsequent transfers to the fund as he deems appropriate
14 in connection with the functions to be carried on through the
15 fund.

16 (c) The fund shall be credited with payments from
17 appropriations and funds of the Bureau of Land Manage-
18 ment, other agencies of the Department of the Interior, other
19 Federal agencies, and other sources, as authorized by law, at
20 rates approximately equal to the cost of furnishing the facili-
21 ties, supplies, equipment, and services (including deprecia-
22 tion and accrued annual leave). Such payments may be made
23 in advance in connection with firm orders, or by way of
24 reimbursement.

1 (d) There is hereby authorized to be appropriated not to
2 exceed \$3,000,000 as initial capital of the working capital
3 fund.

4 DEPOSITS AND FORFEITURES

5 SEC. 304. (a) Any moneys received by the United
6 States as a result of the forfeiture of a bond or other security
7 by a resource developer or purchaser or permittee who does
8 not fulfill the requirements of his contract or permit or does
9 not comply with the regulations of the Secretary, or as a
10 result of a compromise or settlement of any claim whether
11 sounding in tort or in contract involving present or potential
12 damage to national resource lands shall be credited to a sepa-
13 rate account in the Treasury and are hereby appropriated
14 and made available, until expended as the Secretary may
15 direct, to cover the cost to the United States of any im-
16 provement, protection, or rehabilitation work on the na-
17 tional resource lands which has been rendered necessary by
18 the action which has led to the forfeiture, compromise, or
19 settlement.

20 (b) The Secretary may require a user or users of roads,
21 trails, lands, or facilities under the jurisdiction of the Bureau
22 of Land Management to maintain such roads, trails, lands,
23 or facilities in a satisfactory condition commensurate with
24 the particular use requirements and the use made by each,
25 the extent of such maintenance to be shared by the users in

1 proportion to such use or, if such maintenance cannot be so
2 provided, to deposit sufficient money to enable the Secretary
3 to provide such maintenance. Such deposits shall be credited
4 to a separate account in the Treasury and are hereby appro-
5 priated and made available until expended, as the Secretary
6 may direct, to cover the cost to the United States of the
7 maintenance of any road, trail, lands, or facility under the
8 jurisdiction of the Bureau of Land Management: *Provided*,
9 That nothing in this subsection shall be construed to require
10 the user or uses to provide maintenance or deposits to repair
11 any damages attributable to general public use rather than
12 the specific use or users of such user or users.

13 (c) Any moneys collected under this Act in connection
14 with lands administered under the Act of August 28, 1937
15 (50 Stat. 874), as amended, shall be expended for the
16 benefit of such land only.

17 (d) If any portion of a deposit or amount forfeited
18 under this Act is found by the Secretary to be in excess of
19 the cost of doing the work authorized under this Act, the
20 amount in excess shall be transferred to miscellaneous
21 receipts.

22 CONTRACTS FOR CADASTRAL SURVEY OPERATIONS AND
23 RESOURCE PROTECTION

24 SEC. 305. (a) The Secretary is authorized to enter into
25 contracts for the use of aircraft, and for supplies and service,

1 prior to the passage of an appropriation therefor, for airborne
2 cadastral survey and resource protection operations of the Bu-
3 reau of Land Management. He may renew such contracts
4 annually, not more than twice, without additional competi-
5 tion. Such contracts shall obligate funds for the fiscal years
6 in which the costs are incurred.

7 (b) Each such contract shall provide that the obligation
8 of the United States for the ensuing fiscal years is contingent
9 upon the passage of an applicable appropriation, and that no
10 payment shall be made under the contract for the ensuing
11 fiscal years until such appropriation becomes available for
12 expenditure.

13

UNAUTHORIZED USE

14 SEC. 306. The use, occupancy, or development of any
15 portion of the national resource lands contrary to any regula-
16 tion of the Secretary or other responsible authority, or con-
17 trary to any order issued pursuant to any such regulation, is
18 unlawful and prohibited.

19

ENFORCEMENT AUTHORITY

20 SEC. 307. (a) Any violation regulations which the
21 Secretary issues with respect to the management, protection,
22 development, acquisition, and conveying of the national re-
23 source lands and property located thereon and which the
24 Secretary identifies as being subject to this section shall be

1 punishable by a fine of not more than \$1,000 or imprison-
2 ment for not more than twelve months, or both.

3 (b) For the specific purpose of enforcing any law or
4 regulation relating to lands or resources managed by the Sec-
5 retary, the Secretary may designate any employee, while
6 within the national resource lands, to: (i) carry firearms;
7 (ii) execute and serve any warrant or other process issued by
8 a court or officer of competent jurisdiction; (iii) make ar-
9 rests without warrant or process for a misdemeanor he has
10 reasonable grounds to believe is being committed in his pres-
11 ence or view, or for a felony if he has reasonable grounds to
12 believe that the person to be arrested has committed or is
13 committing such felony.

14 (c) At the request of the Secretary, the Attorney Gen-
15 eral may institute a civil action in any United States dis-
16 trict court for an injunction or other appropriate order to
17 prevent any person from using the national resource lands in
18 violation of laws or regulations relating to lands or resources
19 managed by the Secretary.

20 COOPERATION WITH STATE AND LOCAL LAW

21 ENFORCEMENT AGENCIES

22 SEC. 308. In connection with administration and regu-
23 lation of the use and occupancy of the national resource
24 lands, the Secretary is authorized to cooperate with the reg-
25 ulatory and law enforcement officials of any State or political

1 subdivision thereof. Such cooperation may include reim-
2 bursement to a State or its subdivision for expenditures in-
3 curred by it in connection with activities which assist in the
4 administration and regulation of use and occupancy of na-
5 tional resource lands.

6

RECORDATION

7 SEC. 309. (a) All mining claims under the Mining Law
8 of 1872, as amended and supplemented (30 U.S.C. chapters
9 2, 12A, and 16 and sections 161 and 162) shall be recorded
10 with the Secretary of the Interior (hereinafter referred to as
11 the Secretary) within one year after the effective date of this
12 Act or within thirty days of location of a claim, whichever is
13 later. Any mining claim not so recorded shall be conclusively
14 presumed to be abandoned and shall be void. Such recordation
15 will not render valid any claim which was not valid on the
16 effective date of this Act, or which becomes invalid thereafter.

17 (b) Any claim recorded pursuant to subsection (a) of
18 this section, for which the claimant has not made applica-
19 tion for a patent within three years from the date of recorda-
20 tion, shall be presumed to be invalid and shall be void.

21 (c) The Secretary is authorized to issue such rules and
22 regulations as are necessary to carry out the purpose of this
23 section. They shall include, but need not be limited to, regu-
24 lations prescribing the form and substance of the informa-

1 tion submitted by claimants pursuant to subsection (a) of
2 this section.

3 (d) Notwithstanding any provision of the Mining Law
4 of 1872, as amended and supplemented (30 U.S.C. chapters
5 2, 12A, and 16 and sections 161 and 162), the Secretary is
6 authorized to issue such rules and regulations pertaining to
7 prospecting and mining as he deems necessary to protect the
8 environmental quality of lands administered by him. Such
9 regulations shall include, but need not be limited to, re-
10 quirements for either notification to the Secretary or regis-
11 tration by prospectors or miners prior to commencement of
12 any activity undertaken pursuant to the Mining Law of
13 1872, and reclamation of affected lands.

14 TITLE IV—AUTHORITY TO GRANT

15 RIGHTS-OF-WAY

16 AUTHORIZATION TO GRANT RIGHTS-OF-WAY

17 SEC. 401. (a) The Secretary is authorized to grant,
18 issue, or renew rights-of-way over, upon, or through the
19 national resource lands for—

20 (1) reservoirs, canals, ditches, flumes, laterals,
21 pipes, pipelines, tunnels, and other facilities and systems
22 for the impoundment, storage, transportation, or distri-
23 bution of water;

24 (2) pipelines and other systems for the transporta-
25 tion or distribution of liquids and gases, other than oil,

1 natural gas, synthetic liquid or gaseous fuels, or any
2 refined product produced therefrom, or water and for
3 storage and terminal facilities in connection therewith;

4 (3) pipelines, slurry, and emulsion systems, and
5 conveyor belts for transportation and distribution of solid
6 materials, and facilities for the storage of such materials
7 in connection therewith;

8 (4) systems for generation, transmission, and dis-
9 tribution of electric energy, except that the applicant
10 shall also comply with all applicable requirements of the
11 Federal Power Commission under the Act of June 10,
12 1920, as amended (16 U.S.C. 796, 797) ;

13 (5) systems for transmission or reception of radio,
14 television, telegraph, and other electronic signals, and
15 other means of communication ;

16 (6) roads, trails, highways, railroads, canals, tram-
17 ways, airways, livestock driveways, or other means of
18 transportation ; and

19 (7) such other necessary transportation or other
20 systems or facilities which are in the public interest and
21 which require rights-of-way over, upon, or through the
22 national resource lands.

23 (b) (1) The Secretary shall require, prior to granting,
24 issuing, or renewing a right-of-way, that the applicant submit
25 and disclose any or all plans, contracts, agreements, or other

1 information or material reasonably related to the use, or
2 intended use, of the right-of-way which he deems necessary
3 to a determination, in accordance with the provisions of this
4 title, as to whether a right-of-way shall be granted, issued, or
5 renewed and the terms and conditions which should be in-
6 cluded in such right-of-way.

7 (2) If the applicant is a partnership, corporation, associ-
8 ation, or other business entity, the Secretary, prior to grant-
9 ing a right-of-way pursuant to this title, may require the
10 applicant to disclose the identity of the participants, in the
11 entity. Such disclosure shall include, where applicable: (1)
12 the name and address of each partner; (2) the name and
13 address of each shareholder owning 3 per centum or more of
14 the shares, together with the number and percentage of any
15 class of voting shares of the entity which such shareholder
16 is authorized to vote; and (3) the name and address of each
17 affiliate of the entity together with, in the case of an affiliate
18 controlled by the entity, the number of shares and the per-
19 centage of any class of voting stock of that affiliate owned,
20 directly or indirectly, by that entity, and, in the case of an
21 affiliate which controls that entity, the number of shares and
22 the percentage of any class of voting stock of that entity
23 owned, directly or indirectly, by the affiliate. Failure to make
24 the disclosures required by this section shall result in rejec-
25 tion of the application.

RIGHT-OF-WAY

1

2 SEC. 402. (a) After the Secretary has submitted the
3 report required by section 28 (s) of the Mineral Leasing Act
4 of 1920, as amended by the Act of November 16, 1973 (87
5 Stat. 576), he shall, consistent with applicable land use
6 plans, designate transportation and utility corridors on na-
7 tional resource lands and require that rights-of-way be con-
8 fined to them where practical and appropriate. In determin-
9 ing whether to require that rights-of-way be confined to
10 them, the Secretary shall take into consideration National
11 and State land use policies, environmental quality, economic
12 efficiency, national security, safety, and good engineering and
13 technological practices. The Secretary shall issue regulations
14 containing the criteria and procedures he will use in design-
15 ating such corridors. Any existing transportation and utility
16 corridors may be designated as transportation and utility cor-
17 ridors pursuant to this subsection without further review.

18 (b) In order to minimize adverse environmental im-
19 pacts and the proliferation of separate rights-of-way across
20 national resource lands, the use of rights-of-way in common
21 shall be required to the extent practical, and each right-of-
22 way or permit shall reserve to the Secretary the right to
23 grant additional rights-of-way or permits for compatible uses
24 on or adjacent to rights-of-way granted pursuant to this title.

GENERAL PROVISIONS

1
2 SEC. 403. (a) The Secretary shall specify the bound-
3 aries of each right-of-way as precisely as is practicable. Each
4 right-of-way shall be limited to the ground which the Sec-
5 retary determines: (1) will be occupied by facilities which
6 constitute the project for which the right-of-way is given,
7 (2) to be necessary for the operation or maintenance of the
8 project, and (3) to be necessary to protect the environment
9 or public safety. The Secretary may authorize the temporary
10 use of such additional lands as he determines to be reason-
11 ably necessary for the construction, operation, maintenance,
12 or termination of the project or a portion thereof, or for access
13 thereto.

14 (b) The Secretary shall determine the duration of each
15 right-of-way or other authorization to be granted, issued,
16 or renewed pursuant to this title. In determining the dura-
17 tion the Secretary shall, among other things, take into con-
18 sideration the cost of the facility and its useful life.

19 (c) Rights-of-way granted, issued, or renewed pursuant
20 to this title shall be given under such regulations or stipula-
21 tions, in accord with the provision of this title or any other
22 law, and subject to such terms and conditions as the Secre-
23 tary may prescribe regarding extent, duration, survey, loca-
24 tion, construction, maintenance, and termination.

1 (d) The Secretary, prior to granting a right-of-way
2 pursuant to this title for a new project which may have a
3 significant impact on the environment, shall require the
4 applicant to submit a plan of construction, operation, and re-
5 habilitation for such right-of-way which shall comply with
6 stipulations or with regulations issued by the Secretary. The
7 Secretary shall issue regulations or impose stipulations which
8 shall include, but shall not be limited to: (1) requirements
9 to insure that activities on the right-of-way will not violate
10 applicable air and water quality standards or applicable trans-
11 mission, powerplant, and related facility siting standards es-
12 tablished by or pursuant to law; (2) requirements designed
13 to control or prevent (A) damage to the environment (in-
14 cluding damage to fish and wildlife habitat), (B) damage
15 to public or private property, and (C) hazards to public
16 health and safety; and (3) requirements to protect the in-
17 terests of individuals living in the general area traversed by
18 the right-of-way who rely on the fish, wildlife, and biotic
19 resources of the area for subsistence purposes. Such regula-
20 tions shall be regularly revised. Such regulations shall be
21 applicable to every right-of-way granted pursuant to this title,
22 and may be applicable to rights-of-way to be renewed pur-
23 suant to this title.

24 (e) Mineral and vegetative materials, including timber,
25 within or without a right-of-way may be used or disposed of

1 in connection with construction or other purposes only if
2 authorization to remove or use such materials has been ob-
3 tained pursuant to applicable laws.

4 (f) No right-of-way shall be issued for less than the fair
5 market value therefor as determined by the Secretary. The
6 Secretary may, by regulation or prior to promulgation of such
7 regulations, as a condition for consideration of a right-of-way,
8 require reimbursement to the United States for all reasonable
9 administrative and other costs incurred in processing the
10 right-of-way including processing the application, and in in-
11 spection and monitoring of construction, operation, and termi-
12 nation of the facility pursuant to such rights-of-way. How-
13 ever, rights-of-way may be granted, issued, or renewed to
14 State or local governments or agencies or instrumentalities
15 thereof, or to nonprofit associations or nonprofit corpora-
16 tions which are not themselves controlled or owned by profit-
17 making corporations or business enterprises, for such lesser
18 right-of-way charge or cost reimbursement charges as the
19 Secretary finds equitable and in the public interest.

20 (g) The Secretary shall promulgate regulations speci-
21 fying the extent to which holders of rights-of-way under this
22 title shall be liable to the United States for damage or injury
23 incurred by the United States in connection with the rights-
24 of-way. The regulations shall also specify the extent to
25 which such holders shall indemnify or hold harmless the

1 United States for liabilities, damages, or claims arising in
2 connection with the rights-of-way

3 (h) Where he deems it appropriate, the Secretary may
4 require as a condition for consideration of a right-of-way
5 that there be furnished a bond, or other security, satisfactory
6 to the Secretary to secure all or any of the obligations
7 imposed by the terms and conditions of the right-of-way or
8 by any rule or regulation of the Secretary.

9 (i) The Secretary shall grant, issue, or renew a right-of-
10 way under this title only when he is satisfied that the appli-
11 cant has the technical and financial capability to construct
12 the project for which the right-of-way is requested, and in
13 accord with the requirements of this title.

14 TERMS AND CONDITIONS

15 SEC. 404. Each right-of-way shall contain such terms
16 and conditions as the Secretary deems necessary to (1)
17 carry out the purposes of this Act and rules and regulations
18 hereunder; (2) protect the environment; (3) protect Fed-
19 eral property and monetary interests; (4) manage efficiently
20 national resource lands which are subject to the right-of-way
21 or adjacent thereto and protect the other lawful users of the
22 national resource lands adjacent to or traversed by said right-
23 of-way; (5) protect lives and property; (6) protect the
24 interests of individuals living in the general area traversed
25 by the right-of-way who rely on the fish, wildlife, and biotic

1 resources of the area for subsistence purposes; and (7) pro-
2 tect the public interest in the national resource lands.

3 **SUSPENSION OR TERMINATION OF RIGHT-OF-WAY**

4 **SEC. 405.** Abandonment of the right-of-way or noncom-
5 pliance with any provision of this title, condition of the
6 right-of-way, or applicable rule or regulation of the Secre-
7 tary may be grounds for suspension or termination of the
8 right-of-way if, after due notice to the holder of the right-of-
9 way and an appropriate administrative proceeding pursuant
10 to title 5, United States Code, section 554, the Secretary
11 determines that any such ground exists and that suspension
12 or termination is justified. No administrative proceeding
13 shall be required where the right-of-way by its terms pro-
14 vides that it terminates on the occurrence of a fixed or agreed-
15 upon condition, event, or time. If the Secretary determines
16 that an immediate temporary suspension of activities within
17 a right-of-way for violation of its terms and conditions is
18 necessary to protect public health or safety or the environ-
19 ment, he may abate such activities prior to an administrative
20 proceeding. Prior to commencing any proceeding to suspend
21 or terminate a right-of-way the Secretary shall give written
22 notice to the holder of the ground or grounds for such action
23 and shall give the holder a reasonable time to resume use of
24 the right-of-way or to comply with this title, condition, rule,
25 or regulation as the case may be. Failure of the holder of

1 the right-of-way to use the right-of-way for the purpose for
2 which it was granted, issued, or renewed for any continuous
3 five-year period shall constitute a rebuttable presumption of
4 abandonment of the right-of-way: *Provided, however, That*
5 where the failure of the holder to use right-of-way for the
6 purpose for which it was granted, issued, or renewed for any
7 continuous five-year period is due to circumstances not within
8 the holder's control, the Secretary is not required to com-
9 mence proceedings to suspend or terminate the right-of-way.
10 This section does not apply to rights-of-way which are per-
11 mits or licenses.

12 RIGHTS-OF-WAY FOR FEDERAL AGENCIES

13 SEC. 406. (a) The Secretary may reserve for the use of
14 any department or agency of the United States a right-of-way
15 over, upon, or through national resource lands, subject to such
16 terms and conditions as he may impose. The provisions of this
17 title shall be applicable to any such right-of-way.

18 (b) Where a right-of-way has been reserved for the use
19 of any department or agency of the United States, the Secre-
20 tary shall take no action to terminate, or otherwise limit, that
21 use without the consent of the head of that other department
22 or agency.

23 CONVEYANCE OF LANDS

24 SEC. 407. If under applicable law the Secretary decides
25 to transfer out of Federal ownership, by patent, deed, or

1 otherwise, any national resource lands covered in whole or
2 in part by a right-of-way, including a right-of-way granted
3 under the Act of November 16, 1973 (87 Stat. 576),
4 the lands may be conveyed subject to the right-of-way; how-
5 ever, if the Secretary determines that retention of Federal
6 control over the right-of-way is necessary to assure that the
7 purposes of this title will be carried out, the terms and condi-
8 tions of the right-of-way complied with, or the national re-
9 source lands protected, he shall (1) reserve to the United
10 States that portion of the lands which lies within the bound-
11 aries of the right-of-way, or (2) convey the lands, including
12 that portion within the boundaries of the right-of-way, sub-
13 ject to the right-of-way and reserving to the United States
14 the right to enforce all or any of the terms and conditions of
15 the right-of-way, including the right to renew it or extend it
16 upon its termination and to collect rents.

17 EXISTING RIGHTS-OF-WAY

18 SEC. 408. Nothing in this title shall have the effect of
19 terminating any rights-of-way or rights-of-use heretofore
20 issued, granted, or permitted by the Secretary. However,
21 with the consent of the holder thereof, the Secretary may
22 cancel such a right-of-way and in its stead issue a right-of-
23 way pursuant to the provisions of this title.

24 STATE STANDARDS

25 SEC. 409. The Secretary shall take into consideration

1 and, to the extent practical, comply with State standards
2 for right-of-way construction, operation, and maintenance if
3 those standards are more stringent than Federal standards
4 and if the national resource lands are adjacent to lands to
5 which such State standards apply.

6 EFFECT ON OTHER LAWS

7 SEC. 410. (a) After the date of enactment of this Act,
8 no right-of-way for the purposes listed in this title shall be
9 granted, issued, or renewed over, upon, or through national
10 resource lands except under and subject to the provisions,
11 limitations, and conditions of this title: *Provided*, That any
12 application for a right-of-way filed under any other law prior
13 to the date of enactment of this Act may, at the applicant's
14 option, be considered as an application under this title or the
15 Act under which the application was filed. The Secretary
16 may require the applicant to submit any additional informa-
17 tion he deems necessary to comply with the requirements of
18 this title.

19 (b) Nothing in this title shall be construed to preclude
20 the use of national resource lands for highway purposes pur-
21 suant to sections 107 and 317 of title 23, United States Code.

22 SEC. 411. Applicants before Federal agencies other than
23 the Department of the Interior seeking a license, certificate
24 or other authority for a project which will involve national

41

1 resource lands must simultaneously apply to the Secretary of
2 the Interior for the appropriate authority to use national re-
3 source lands and submit to the Secretary all information
4 furnished to the other Federal agency.

5 TITLE V—CONSTRUCTION OF LAW, PRESERVA-
6 TION OF VALID EXISTING RIGHTS, AND
7 REPEAL OF LAWS

8 CONSTRUCTION OF LAW

9 SEC. 501. (a) Except as provided in section 410, the
10 authority conferred upon the Secretary by this Act is in
11 addition to all other authority vested in him by law, and
12 nothing in this Act shall be deemed to repeal any such other
13 authority by implication.

14 (b) Nothing in this Act shall be construed as limiting or
15 restricting the power and authority of the United States, or—

16 (1) as affecting in any way any law governing
17 appropriations or use of, or Federal right to, water on
18 national resource lands;

19 (2) as expanding or diminishing Federal or State
20 jurisdiction, responsibility, interests, or rights in water
21 resources development or control;

22 (3) as displacing, superseding, limiting, or modi-
23 fying any interstate compact or the jurisdiction or re-
24 sponsibility of any legally established joint or common

1 agency of two or more States or of two or more States
2 and the Federal Government;

3 (4) as superseding, modifying, or repealing, except
4 as specifically set forth in this Act, existing laws appli-
5 cable to the various Federal agencies which are author-
6 ized to develop or participate in the development of
7 water resources or to exercise licensing or regulatory
8 functions in relation thereto;

9 (5) as modifying the terms of any interstate
10 compact;

11 (6) as a limitation upon any State criminal statute
12 or upon the police power of the respective States, or as
13 derogating the authority of a local police officer in the
14 performance of his duties, or as depriving any State or
15 political subdivision thereof of any right it may have to
16 exercise civil and criminal jurisdiction on the national
17 resource lands;

18 (7) as affecting the jurisdiction or responsibilities
19 of the several States with respect to wildlife and fish in
20 the national resource lands; or

21 (8) as amending, limiting, or infringing the exist-
22 ing laws providing grants of land to the States.

23 **VALID EXISTING RIGHTS**

24 **SEC. 502.** All actions by the Secretary under this Act
25 shall be subject to valid existing rights.

1 REPEAL OF LAWS RELATING TO DISPOSAL OF NATIONAL
 2 RESOURCE LANDS
 3 SEC. 503. (a) The following statutes or parts of statutes
 4 are repealed:

1. HOMESTEADS

Act of—	Chapter	Section	Statute at large	43 U.S.C.
Revised Statute 2289				161, 171.
Mar. 3, 1891	561	5	26: 1007	161, 162.
Revised Statute 2290				162.
Revised Statute 2295				163.
Revised Statute 2291				164.
June 6, 1912	153		37: 129	164, 169, 218.
May 14, 1880	89		21: 141.	166, 185, 202, 228.
June 6, 1900	821		31: 923	166, 222.
Aug. 9, 1912	280		37: 267	
Apr. 6, 1914	51		38: 312	167.
Mar. 1, 1921	90		41: 1168	
Oct. 17, 1914	825		38: 740	168.
Revised Statute 2297				169.
Mar. 3, 1891	153		21: 511	
Oct. 22, 1914	335		38: 766	170.
Revised Statute 2292				171.
June 8, 1880	136		21: 166	172.
Revised Statute 2301				173.
Mar. 3, 1891	561	6	26: 1098	
June 8, 1896	312	2	29: 197	
Revised Statute 2288				174.
Mar. 3, 1891	561	3	26: 1097	
Mar. 3, 1906	1424		33: 991	
Revised Statute 2296				175.
Apr. 28, 1922	155		42: 502	
May 17, 1900	479	1	13: 179	179.
Jan. 26, 1901	180		31: 740	180.
Sept. 5, 1914	294		38: 712	182.
Revised Statute 2300				183.
Aug. 31, 1918	166	8	40: 597	
Sept. 13, 1918	173		40: 900	
Revised Statute 2302				184, 201.
July 26, 1892	251		27: 270	185.
Feb. 14, 1920	76		41: 434	186.
Jan. 21, 1922	32		42: 358	
Dec. 28, 1922	19		42: 1087	
June 12, 1930	471		46: 580	
Feb. 25, 1925	326		43: 981	187.
June 21, 1934	690		48: 1185	187a.
May 22, 1902	821	2	32: 203	187b.
June 5, 1900	716		31: 276	188, 217.
Mar. 3, 1875	131	15	18: 420	189.
July 4, 1884—Only last para- graph of sec. 4.	180		23: 96	190.
Mar. 1, 1933	160	1	47: 1418	190a.

The following words only: "Provided, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C. title 43, sec. 190)."

Revised Statutes 2310, 2311				191.
June 13, 1902	1080		32: 384	208.
Mar. 3, 1879	191		20: 472	204.
July 1, 1879	60		21: 46	205.
May 6, 1886	88		24: 22	206.
Aug. 21, 1916	361		39: 518	207.
June 3, 1924	240		43: 357	208.
Revised Statute 2298				211.
Aug. 30, 1890	837		26: 391	212.

The following words only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the lands laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act."

Mar. 3, 1891	561	17	26: 1101	
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The following words only: "and that the provision of "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws."

Act of—	Chapter	Section	Statute at large	48 U.S.C.
Apr. 28, 1904.....	1779.		25: 527	213.
Aug. 2, 1900.....	521		64: 293	
Mar. 2, 1899.....	251	6	25: 654	214.
Feb. 20, 1917.....	92		39: 928	215.
Mar. 4, 1921.....	165		41: 1285	215.
Feb. 19, 1900.....	180	1	25: 639	215.
June 13, 1912.....	198		27: 132	
Mar. 2, 1915.....	84		28: 953	
Mar. 2, 1915.....	91		28: 957	
Mar. 4, 1915.....	150	2	28: 1158	
July 8, 1915.....	220		30: 344	
Feb. 11, 1913.....	39		27: 639	215, 219.
June 17, 1910.....	258		25: 531	219.
Mar. 2, 1915.....	91		28: 957	
Sept. 5, 1919.....	440		26: 724	
Aug. 10, 1917.....	52	10.	40: 275	
Mar. 4, 1915.....	150	1	28: 1162	220.
Mar. 4, 1922.....	245	1	42: 1445	221.
Apr. 28, 1904.....	1801		25: 547	224.
Mar. 2, 1907.....	2227		34: 1234	
May 20, 1908.....	220	7	25: 498	
Aug. 24, 1912.....	371		27: 459	
Aug. 22, 1914.....	270		28: 704	231.
Feb. 25, 1919.....	21		40: 1153	
July 2, 1915.....	214		29: 341	232.
Sept. 20, 1919.....	64		41: 289	232.
Apr. 6, 1923.....	128		43: 491	232, 272, 273.
Mar. 2, 1899.....	251	3	25: 654	234.
Dec. 20, 1894.....	14		25: 599	
July 1, 1879.....	68	1	21: 48	235.
Dec. 20, 1917.....	6		40: 430	235.
July 24, 1919.....	26	Next to last para- graph only.	41: 371	237.
Mar. 2, 1922.....	69		47: 59	237a.
May 21, 1904.....	230		48: 787	237b.
May 22, 1925.....	135		49: 286	237c.
Aug. 19, 1905.....	580		49: 659	237d.
Mar. 21, 1909.....	57		52: 149	
Apr. 20, 1909.....	239		49: 1285	237e.
July 20, 1909.....	778	1, 2, 4.	70: 715	237f, g, h.
Mar. 1, 1921.....	102		41: 1293	238.
Apr. 7, 1922.....	126		42: 462	
Revised Statute 2306.....				232.
June 16, 1908.....	456		39: 473	240.
Aug. 20, 1916.....	450		39: 671	
Apr. 7, 1920.....	108		45: 144	243.
Mar. 2, 1922.....	196		47: 1424	243a.
Mar. 2, 1879.....	192		20: 472	251.
Mar. 2, 1899.....	251	7	25: 655	252.
June 8, 1878.....	152		20: 91	254.
Revised Statute 2304.....				254.
May 25, 1890.....	255		25: 121	
Mar. 11, 1902.....	182		22: 68	
Mar. 4, 1904.....	264		23: 58	
Feb. 25, 1925.....	105		42: 1261	
Revised Statute 2309.....				255.
Oct. 6, 1917.....	85		40: 391	
Mar. 4, 1913.....	149	Only last para- graph of section headed "Public Land Service"	37: 925	256.
May 12, 1909.....	178		47: 183	256a.
June 16, 1909.....	99		48: 274	
July 20, 1909.....	419		49: 504	
June 16, 1907.....	251		50: 268	
Aug. 27, 1925.....	770		49: 909	256b.
Sept. 20, 1900.....	J. Res. 39		25: 694	261.
June 16, 1909.....	244		21: 287	269.
Apr. 18, 1904.....	25		36: 599	
Revised Statute 2304.....				271.
Mar. 1, 1901.....	674		31: 947	271, 272.
Revised Statute 2305.....				272.
Feb. 25, 1919.....	57		40: 1161	272a.
Dec. 20, 1922.....	19		42: 1087	
Revised Statute 2305.....				274.
Mar. 2, 1898.....	208		27: 598	275.
The following words only: "And provided further: That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land; but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."				
Aug. 12, 1904.....	301	Only last para- graph of section headed "Sur- veying the Public Lands"	26: 207	276.
Revised Statute 2309.....				277.
Revised Statute 2307.....				278.
Sept. 21, 1922.....	257		42: 900	
Sept. 27, 1944.....	421		58: 747	279-286.
June 25, 1945.....	474		60: 208	279.
May 21, 1947.....	89		61: 123	279, 280, 282.
June 15, 1954.....	308		68: 253	279, 282.
June 2, 1968.....	300		62: 233	283, 284.
Dec. 20, 1916.....	9	1-4	39: 302	291-293.
Feb. 25, 1921.....	228		46: 1454	291.
June 9, 1923.....	53		48: 119	291.

Act of—	Chapter	Section	Statute at large	43 U.S.C.
June 6, 1894	274		46: 469	292.
Oct. 25, 1918	195		40: 1016	253.
Sept. 29, 1919	63		41: 287	294, 295.
Mar. 4, 1923	245	2	42: 1445	302
Aug. 21, 1916	361		39: 518	1075.
Aug. 28, 1937	876	3	50: 875	1181c.

2.—DESERT LAND ENTRIES

Mar. 3, 1877	107	2, 3	19: 877	322-328, 325.
Mar. 3, 1891	561	2	26: 1096	327-329.

Except the words: "... all acts and parts of acts in conflict with this act are hereby repealed."

Jan. 6, 1921	12		41: 1086	
Mar. 23, 1908	112		35: 82	324, 326, 333.
Feb. 27, 1917	134		39: 946	330.
Mar. 1, 1921	102		41: 1202	331.
Dec. 15, 1921	3		42: 348	
Aug. 7, 1917	48		40: 250	332.
Apr. 30, 1912	101		37: 109	334.
Feb. 25, 1925	329		43: 962	336.
July 30, 1956	778		70: 715	336a-d.
Mar. 4, 1915	147	5	38: 1161	335, 337, 338.
Mar. 21, 1918	28		40: 458	
Mar. 4, 1929	687		45: 1548	339.
Feb. 14, 1934	9		48: 349	

3. SALE AND DISPOSAL LAWS

Mar. 2, 1891	561	9	26: 1099	671.
Revised Statute 2354				673.
Revised Statute 2355				674.
May 18, 1908	344	2	30: 418	675.
Revised Statute 2365				676.
Revised Statute 2367				678.
June 15, 1920	227	3, 4	21: 238	679, 680.
Mar. 2, 1920	381	4	25: 854	681.
Mar. 1, 1907	2286		34: 1052	682.
June 1, 1908	317		52: 609	682a-e.
July 14, 1945	236		59: 467	
June 8, 1904	270		68: 239	
Revised Statute 2361				688.
Revised Statute 2362				689.
Revised Statute 2363				690.
Revised Statute 2368				691.
Revised Statute 2369				692.
Revised Statute 2369				693.
Revised Statute 2370				694.
Revised Statute 2371				695.
Revised Statute 2374				696.
Revised Statute 2372				697.
Feb. 24, 1909	181		35: 645	
May 21, 1926	353	The 2 provisos only.	44: 591	
Revised Statute 2375				698.
Revised Statute 2376				699.
Mar. 2, 1909	381	1	25: 854	700.

4. TOWNSITE RESERVATION AND SALE

Revised Statute 2380				711.
Revised Statute 2381				712.
Revised Statute 2382				713.
Aug. 24, 1954	904		68: 792	
Revised Statute 2383				714.
Revised Statute 2394				715.
Revised Statute 2396				717.
Revised Statute 2387				718.
Revised Statute 2388				719.
Revised Statute 2389				720.
Revised Statute 2391				721.
Revised Statute 2392				722.
Revised Statute 2393				723.
Revised Statute 2394				724.
Mar. 3, 1877	113	1, 3, 4	19: 392	725-727.
Mar. 3, 1891	561	16	26: 1101	728.
July 9, 1914	138		38: 454	730.
Feb. 9, 1908	531		32: 820	731.

5. DRAINAGE UNDER STATE LAWS

May 20, 1908	181	1-7	35: 171	1021-1027.
Mar. 3, 1919	561		40: 1321, ch. 113	1028.
May 1, 1926	Public Law 387	85-	72: 99	1029-1084.
Jan. 17, 1920	47		41: 392	1041-1046.

6. ABANDONED MILITARY RESERVATION

Act of—	Chapter	Section	Statute at large	43 U.S.C.
July 5, 1894.....	214	5	23: 104	1074.
Aug. 21, 1916.....	361		39: 518	1075.
Mar. 3, 1903.....	208		27: 503	1076.

The following words only: "Provided, That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place."

Aug. 23, 1894.....	314		28: 491	1077, 1078.
Feb. 11, 1903.....	543		32: 822	1079.
Feb. 15, 1895.....	92		28: 664	1080, 1077.
Apr. 23, 1904.....	1496		33: 306	1081.

7. PUBLIC LANDS: OKLAHOMA

May 2, 1890.....	182	Last paragraph of sec. 18 and secs. 20, 21, 22, 24, 27.	26: 90.	1091-1094, 1098, 1097.
Mar. 3, 1891.....	543	16.	26: 1026	1098.
Aug. 7, 1946.....	772	1. 2	60: 872	1100-1101.
Aug. 8, 1955.....	498	1-8.	69: 445	1102-1102g.
May 14, 1890.....	207		26: 109	1111-1117.
Sept. 1, 1893.....	164	J. Res. 4.	28: 11	1118.
May 11, 1906.....	168	1, 2	29: 116	1119.
Jan. 18, 1897.....	62	1-3, 5, 7.	29: 490	1121-1124.
June 23, 1897.....	8		30: 105	
Mar. 1, 1899.....	328		30: 966	

8. SALES OF ISOLATED TRACTS

Revised Statute 2455.....				1171.
Feb. 26, 1895.....	133		28: 687	
June 27, 1906.....	3554		34: 517	
Mar. 28, 1912.....	67		37: 77	
Mar. 9, 1928.....	164		45: 253	
June 28, 1934.....	865	14.	48: 1274	
July 30, 1947.....	383		61: 630	
Apr. 24, 1928.....	428		45: 457	1171a.
May 23, 1930.....	313		46: 377	1171b.
Feb. 4, 1919.....	13		40: 1053	1172.
May 10, 1920.....	178		41: 595	1173.
Aug. 11, 1921.....	62		42: 159	1175.
May 19, 1926.....	337		44: 566	1176.
Feb. 14, 1891.....	170		46: 1109	1177.

ALASKA SPECIAL LAWS

Mar. 3, 1891.....	561	11.	26: 1099	732.
May 25, 1926.....	379		44: 629	733-736.
May 29, 1963.....		Public Law 88-34.	77: 52	
July 24, 1947.....	305		61: 414	738.
May 14, 1896.....	299	1	30: 499	270.
Mar. 3, 1903.....	1002		32: 1028	
Apr. 29, 1950.....	137	1	64: 94	
Aug. 3, 1955.....	496		69: 444	270, 687a-2.
Apr. 29, 1950.....	137	2-5.	64: 95	270, 270-5.
July 11, 1956.....	571		70: 529	270-6, 270-7, 687a.
July 8, 1916.....	228		39: 352	270-8, 270-9.
June 28, 1918.....	110		40: 632	270-10, 270-12, 270.
July 11, 1956.....	571	1	70: 528	
Mar. 8, 1922.....	96		42: 415	270-11.
Aug. 23, 1958.....		Public Law 85-725.	72: 730	
Aug. 17, 1961.....		Public Law 87-147.	75: 384	270-13.
Oct. 3, 1962.....		Public Law 87-742.	76: 740	
Apr. 13, 1926.....	121		44: 243	270-15.
Apr. 29, 1950.....	134	3	64: 93	270-16, 270-1.
May 14, 1898.....	299	10.	30: 413	270-4.
Mar. 3, 1927.....	323		44: 1364	687a to 687a-5.
May 26, 1934.....	357		48: 809	
Aug. 23, 1958.....		Public Law 85-725.	72: 730	
Mar. 3, 1891.....	561	13.	26: 1100	687a-6.
Aug. 30, 1949.....	521		63: 679	687b to 687b-4.
July 19, 1963.....		Public Law 88-66.	77: 80	687b-5.

10. PITTMAN UNDERGROUND WATER ACT

Sept. 22, 1922.....	400		42: 1012	356.
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- 1 (b) Section 7 of the Taylor Grazing Act, 48 Stat.
- 2 1272, ch. 865, as amended by section 2 of the Act of
- 3 June 26, 1936, (49 Stat. 1976, ch. 842, title I, 43 U.S.C.
- 4 315f), is further amended to read as follows:

1 “The Secretary of the Interior is authorized, in his dis-
2 cretion, to examine and classify any lands withdrawn or re-
3 served by Executive order of November 26, 1934 (num-
4 bered 6910), and amendments thereto, and Executive order
5 of February 5, 1935 (numbered 6964), or within a grazing
6 district, which are more valuable or suitable for any other
7 use than for the use provided for under this Act, or proper
8 for acquisition in satisfaction of any outstanding lien, ex-
9 change, or land grant, and to open such lands to disposal in
10 accordance with such classification under applicable public
11 land laws. Such lands shall not be subject to disposition until
12 after the same have been classified and opened to disposal.”

13 (c) (1) The Act of March 3, 1877, as amended (19
14 Stat. 377; 43 U.S.C. 321, 322, 323, 325, 327-329), is re-
15 pealed, except that portion of section 321 of title 42, United
16 States Code, reading as follows: “The water of all lakes,
17 rivers, and other sources of water supply upon the public
18 lands and not navigable, shall remain and be held free for
19 the appropriation and use of the public for irrigation, mining,
20 and manufacturing purposes subject to existing rights.”.

21 (2) Section 321 of title 43, United States Code, is
22 amended as follows: “*Provided, however,* That nothing
23 contained in this Act shall be deemed to abrogate or extin-
24 guish any claim to or ownership of rights under, or adja-
25 cent to lands withdrawn from the public domain.”.

1 (d) Section 2 of the Act of March 8, 1922 (42 Stat.
2 416, ch. 96, as amended by section 2 of the Act of August 23,
3 1958, 72 Stat. 730, Public Law 85-725, 43 U.S.C. 270-
4 12), is further amended to read:

5 “The coal, oil, or gas deposits reserved to the United
6 States in accordance with the Act of March 8, 1922 (42 Stat.
7 415, ch. 96, as added to by the Act of August 17, 1961, 75
8 Stat. 384, Public Law 87-147, and amended by the Act of
9 October 3, 1962, 76 Stat. 740, Public Law 87-742), shall be
10 subject to disposal by the United States in accordance with
11 the provisions of the laws applicable to coal, oil, or gas de-
12 posits or coal, oil, or gas lands in Alaska in force at the time
13 of such disposal. Any person qualified to acquire coal, oil, or
14 gas deposits, or the right to mine or remove the coal or to
15 drill for and remove the oil or gas under the laws of the
16 United States shall have the right at all times to enter upon
17 the lands patented under the Act of March 8, 1922, as
18 amended, and in accordance with the provisions hereof, for
19 the purpose of prospecting for coal, oil, or gas therein, upon
20 the approval by the Secretary of the Interior of a bond or
21 undertaking to be filed with him as security for the payment
22 of all damages to the crops and improvements on such lands
23 by reason of such prospecting. Any person who has acquired
24 from the United States the coal, oil, or gas deposits in any
25 such land, or the right to mine, drill for, or remove the same,

1 may reenter and occupy so much of the surface thereof inci-
2 dent to the mining and removal of the coal, oil, or gas there-
3 from, and mine and remove the coal or drill for and remove
4 oil and gas upon payment of the damages caused thereby to
5 the owner thereof, or upon giving a good and sufficient bond
6 or undertaking in an action instituted in any competent court
7 to ascertain and fix said damages: *Provided*, That the owner
8 under such limited patent shall have the right to mine the
9 coal for use on the land for domestic purposes at any time
10 prior to the disposal by the United States of the coal depos-
11 its: *Provided further*, That nothing in this Act shall be
12 construed as authorizing the exploration upon or entry of any
13 coal deposits withdrawn from such exploration and
14 purchase.”.

15 Section 3 of the Act of August 30, 1949 (63 Stat. 679,
16 ch. 521, 43 U.S.C. 678b-2), is amended to read:

17 “Notwithstanding the provisions of any Act of Congress
18 to the contrary, any person who prospects for, mines, or re-
19 moves any minerals from any land disposed of under the
20 Act of August 30, 1949 (63 Stat. 679, ch. 521), shall be
21 liable for any damage that may be caused to the value of the
22 land and tangible improvements thereon by such prospecting
23 for, mining, or removal of minerals. Nothing in this section
24 shall be construed to impair any vested right in existence on
25 August 30, 1949.”.

1 REPEAL OF LAWS RELATING TO ADMINISTRATION OF
 2 NATIONAL RESOURCE LANDS
 3 SEC. 504. The following statutes or parts of statutes are
 4 repealed:

Act of—	Chapter	Section	Statute at Large	43 U.S.C.
1. Mar. 2, 1895.....	174.....	.....	28: 744.....	176.
2. June 28, 1934.....	865.....	8.....	48: 1272.....	815g.
June 26, 1936.....	842.....	.....	49: 1976, Title I.....	.....
June 19, 1948.....	548.....	1.....	62: 533.....	.....
July 9, 1962.....	Public Law 87-524.....	.....	76: 140.....	315g-1.
3. Aug. 24, 1887.....	744.....	.....	50: 748.....	315p.
4. Mar. 3, 1909.....	271.....	2d proviso only.....	35: 845.....	772.
June 25, 1910.....	J. Res. 40.....	.....	36: 884.....	871a.
5. June 21, 1934.....	689.....	.....	48: 1185.....	871a.
6. Revised Statute 2447.....	.....	.....	.....	1151.
Revised Statute 2448.....	.....	.....	.....	1152.
7. June 6, 1874.....	223.....	.....	18: 62.....	1153, 1154.
8. January 28, 1879.....	30.....	.....	20: 274.....	1155.
9. May 30, 1894.....	67.....	.....	28: 84.....	1156.
10. Revised Statute 2450.....	66.....	1.....	19: 244.....	1161.
Feb. 27, 1877.....				
The following words only: "Section twenty-four hundred and fifty is amended by striking out, in the fourth line, the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior'".				
Revised Statute 2451.....	66.....	1.....	19: 244.....	1162.
Feb. 27, 1877.....				
The following words only: "Section twenty-four hundred and fifty-one is amended by striking out, in the first and second lines, the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior'".				
Revised Statute 2456.....	.....	.....	.....	1163.
Sept. 20, 1922.....	350.....	.....	48: 857.....	.....
The words: "... and sections 2450, 2451, and 2456 be amended to read as follows:" and all words following in the Act.				
Revised Statute 2457.....	.....	.....	.....	1164.
11. Mar. 3, 1891.....	561.....	7.....	26: 1098.....	1165.
12. Revised Statute 2471.....	.....	.....	.....	1191.
Revised Statute 2472.....	.....	.....	.....	1192.
Revised Statute 2473.....	.....	.....	.....	1193.
13. July 14, 1960.....	Public Law 86-649	101-202(a), 203-.....	74: 506.....	1361, 1362, 1363-.....
14. Sept. 26, 1970.....	204(a), 301-303.....	.....	84: 885.....	1363.
15. July 31, 1939.....	401.....	1,2.....	53: 1144.....	1362a.

5 REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY
 6 SEC. 505. (a) The following statutes or parts of stat-
 7 utes are repealed insofar as they apply to National Resource
 8 Lands:

Act of—	Chapter	Section	Statute at large	43 U.S.C.
Revised Statutes 2239.....	.....	.....	.....	661.
The following words only: "and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage."				
Revised Statutes 2340.....	.....	.....	.....	661.
The following words only: "... or rights to ditches and reservoirs used in connection with such water rights."				
Feb. 26, 1897.....	335.....	.....	29: 599.....	664.
Mar. 3, 1899.....	427.....	1.....	30: 1233.....	665, 956 (16 U.S.C. 525).

The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."

Act of—	Chapter	Section	Statute at large	43 U.S.C.
Mar. 3, 1875.....	152.....		18: 462.....	934-939.
May 14, 1898.....	299.....	2-9.....	30: 409.....	942-1 to 942-9.
Feb. 27, 1901.....	614.....		31: 815.....	943.
June 26, 1906.....	3548.....		34: 481.....	944.
Mar. 3, 1891.....	561.....	18-21.....	26: 1101.....	946-949.
Mar. 4, 1917.....	184.....	1.....	39: 1197.....	
May 28, 1926.....	409.....		44: 668.....	
Mar. 1, 1921.....	93.....		41: 1194.....	950.
Jan. 13, 1887.....	11.....		29: 484.....	952-955.
Mar. 3, 1923.....	219.....		42: 1437.....	
Jan. 21, 1895.....	37.....		28: 635.....	951, 956, 957.
May 14, 1896.....	179.....		29: 120.....	
May 11, 1898.....	292.....		30: 404.....	
Mar. 4, 1917.....	184.....	2.....	39: 1197.....	
Feb. 15, 1901.....	372.....		31: 790.....	959 (16 U.S.C. 79, 522).
Mar. 4, 1911.....	238.....		36: 1253.....	961 (16 U.S.C. 5, 420, 523.)

Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service".

May 27, 1952.....	338.....		66: 95.....	
May 21, 1896.....	212.....		29: 127.....	962-965.
Apr. 12, 1910.....	155.....		36: 296.....	966-970.

- 1 (b) Notwithstanding the provisions of subsection (a) of
 2 this section, the following statutes are repealed in their
 3 entirety:

Act of—	Chapter	Section	Statute at large	U.S. C.
Revised Statute 2477.....				43 U.S.C. 982.

[SUBCOMMITTEE PRINT]

MARCH 27, 1975

**PUBLIC LAND POLICY AND MANAGEMENT ACT
PRINT NO. 1**

[Prepared for the use of the Subcommittee on Public Lands, Committee on Interior and Insular Affairs, House of Representatives, Ninety-Fourth Congress, First Session.]

A BILL

To establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

TABLE OF CONTENTS**TITLE I—SHORT TITLE, DECLARATION OF
POLICY, AND DEFINITIONS**

- Sec. 101. Short title.
- Sec. 102. Declaration of policy.
- Sec. 103. Definitions.

TABLE OF CONTENTS—Continued

TITLE II—PLANNING FUTURE PUBLIC LAND USE

- Sec. 201. Inventory and identification.
- Sec. 202. Land use planning.
- Sec. 203. Sales.
- Sec. 204. Withdrawals.
- Sec. 205. Acquisition of land.
- Sec. 206. Exchanges.
- Sec. 207. Recordation of mining claims and abandonment.
- Sec. 208. Recordable disclaimers of interest in land.
- Sec. 209. Conveyance of reserved mineral interests.
- Sec. 210. Grazing fees.
- Sec. 211. Duration of grazing leases.
- Sec. 212. Grazing district advisory boards.

TITLE III—BUREAU OF LAND MANAGEMENT

- Sec. 301. Establishment of Bureau.
- Sec. 302. Enforcement authority.
- Sec. 303. Cooperation with State and local law enforcement agencies.
- Sec. 304. Service charges, reimbursement payments, and excess payments.
- Sec. 305. Deposits and forfeitures.
- Sec. 306. Working capital fund.
- Sec. 307. Studies, cooperative agreements, and contributions.
- Sec. 308. Contracts for surveys and resource protection.
- Sec. 309. Local advisory councils.
- Sec. 310. Rules and regulations.
- Sec. 311. Annual report.
- Sec. 312. Bureau of Land Management wilderness study.

TITLE IV—DESERT LANDS

- Sec. 401. California desert conservation area.
- Sec. 402. Conveyances for recreation purposes.
- Sec. 403. Desert areas study.

TITLE V—RIGHTS-OF-WAY

- Sec. 501. Authorization to grant rights-of-way.
- Sec. 502. Cost-share road program authorization.
- Sec. 503. Right-of-way corridors.
- Sec. 504. General provisions.
- Sec. 505. Terms and conditions.
- Sec. 506. Suspension or termination of rights-of-way.
- Sec. 507. Rights-of-way for Federal agencies.
- Sec. 508. Conveyance of lands.
- Sec. 509. Existing rights-of-way.
- Sec. 510. State standards.
- Sec. 511. Effect on other laws.

TABLE OF CONTENTS—Continued

TITLE VI—EFFECT ON EXISTING RIGHTS; REPEAL OF
PRIOR LAWS; APPROPRIATION AUTHORIZATION, AND
EFFECTIVE DATE

Sec. 601. Effect on existing rights.

Sec. 602. Repeal of laws relating to homesteading, desert entry, and small tracts.

Sec. 603. Repeal of laws relating to disposal.

Sec. 604. Repeal of laws relating to administration of public lands.

Sec. 605. Repeal of laws relating to rights-of-way.

Sec. 606. Authorization.

Sec. 607. Severability.

1 TITLE I—SHORT TITLE, DECLARATION OF
2 POLICY, AND DEFINITIONS

3 SHORT TITLE

4 SEC. 101. This Act may be cited as the “Public Land
5 Policy and Management Act of 1975”.

6 DECLARATION OF POLICY

7 SEC. 102. (a) The Congress declares that it is the policy
8 of the United States that—

9 (1) the public lands be retained in Federal owner-
10 ship unless as a result of the land use planning procedure
11 provided for in this Act it is determined that disposal of
12 a particular parcel will best serve the national interest;

13 (2) the national interest will be best realized if the
14 public lands and their resources are periodically and sys-
15 tematically inventoried and their present and future
16 use is projected through a land use planning process

1 coordinated with other Federal and State planning
2 efforts;

3 (3) all public lands not previously designed for any
4 specific use and all existing classifications of public
5 lands that were effected by executive action or statute
6 before the date of enactment of this Act be reviewed in
7 accordance with the overall land use planning goals set
8 forth in this Act;

9 (4) the Congress exercise its constitutional author-
10 ity to withdraw or otherwise designate or dedicate Fed-
11 eral lands for specified purposes and that Congress
12 delineate the extent to which the Executive may with-
13 draw lands without legislative action;

14 (5) in administering public land statutes and exer-
15 cising discretionary authority, granted by them, the
16 Secretary be required to establish comprehensive rules
17 and regulations after considering the views of the general
18 public; and to structure adjudication procedures to assure
19 adequate third party participation, objective administra-
20 tive review of initial decisions, and expeditious decision-
21 making;

22 (6) judicial review of public land adjudication
23 decisions;

24 (7) goals and objectives be established by law as
25 guidelines for public land use planning, and that man-

1 agement be on the basis of multiple use and sustained
2 yield unless otherwise specified by law;

3 (8) the public lands be managed in a manner that
4 will protect the quality of scientific, scenic, historical,
5 ecological, and archeological values; that where appro-
6 priate will preserve and protect certain public lands in
7 their natural condition; that will provide habitat for fish
8 and wildlife; and that will provide for outdoor recreation;

9 (9) the United States receive fair market value
10 of the use of the public lands and their resources unless
11 otherwise provided for by statute;

12 (10) uniform procedures for any disposal of public
13 land, acquisition of non-Federal land for public purposes,
14 and the exchange of such lands be established by statute,
15 requiring each disposal, acquisition, and exchange to be
16 consistent with the prescribed mission of the public land
17 management agency involved, and reserving to Congress
18 disposals, acquisitions, and exchanges in excess of a spec-
19 ified acreage;

20 (11) regulations or plans for the protection of areas
21 of critical environmental concern be promptly devel-
22 oped; and any permit, license, or other authorization to
23 use, occupy, or develop the public lands contain provi-
24 sions authorizing revocation or suspension of such per-
25 mit, license, or other authorization upon violation of any

1 regulation issued with respect to the enforcement of this
2 Act or of any applicable State or Federal air, water, or
3 other environmental quality standard; and

4 (12) recognize the Nation's need for domestic
5 sources of minerals, food, and fiber from the public lands
6 including implementation of the Mining and Minerals
7 Policy Act of 1970 as it pertains to the public lands.

8 (b) The policies of this Act are supplemental to and not
9 in derogation of the purposes for which public lands are ad-
10 ministered by agencies and departments of the United States
11 in the fulfillment of their statutory obligations.

12 DEFINITIONS

13 SEC. 103. As used in this Act—

14 (a) The term "areas of critical environmental con-
15 cern" means areas within the public lands where, when such
16 areas are developed or used special management attention is
17 required in order to protect, or where development is
18 excluded to prevent irreparable damage to, important his-
19 toric, cultural, or scenic values or natural systems or proc-
20 esses, or life and safety which might result from natural
21 hazards.

22 (b) The term "holder" means any State or local
23 governmental entity or agency or any person receiving a
24 right-of-way under title V of this Act.

25 (c) The term "multiple use" means the manage-

1 ment of the public lands and their various resource values
2 so that they are utilized in the combination that will best
3 meet the present and future needs of the American people;
4 making the most judicious use of the land for some or all of
5 these resources or related services over areas large enough to
6 provide sufficient latitude for periodic adjustments in use to
7 conform to changing needs and conditions; the use of some
8 land for less than all of the resources; a combination of bal-
9 anced and diverse resource uses that takes into account the
10 long-term needs of future generations for renewable and non-
11 renewable resources, including recreation, range, timber,
12 minerals, watershed, wildlife and fish, and natural scenic,
13 scientific and historical values; and harmonious and coordi-
14 nated management of the various resources without impair-
15 ment of the productivity of the land, with consideration being
16 given to the relative values of the resources and not neces-
17 sarily to the combination of uses that will give the greatest
18 economic return or the greatest unit output: *Provided*, That
19 nothing in this definition shall be construed as affecting the
20 responsibilities of the Secretary of the Interior for disposition
21 of mineral resources of the National Forest System.

22 (d) The term "public involvement" means the op-
23 portunity for participation by citizens, including those at the
24 local level, in rulemaking, decisionmaking, and planning with
25 respect to the public lands, including public hearings, ad-

visory mechanisms, and such other procedures as may be necessary to provide public input in a particular instance.

(e) The term "public lands" means any lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except—

(1) lands located on the Outer Continental Shelf;
and

(2) lands held in trust for the benefit of Indians, Aleuts, and Eskimos.

(f) The term "right-of-way" means an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purposes listed in title V of this Act.

(g) The term "Secretary", unless specifically designated otherwise, means the Secretary of the Interior.

(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands without impairment of the productivity of the land.

(i) The term "wilderness" as used in section 312 shall have the same meaning as it does in section 2 (c) of the Wilderness Act.

(j) The term "withdrawal" means the exclusion of an

9

1 area of public lands, or of lands within the National Forest
2 System, from management under principles of multiple use
3 in order to protect or favor particular public values in the
4 land, or a withholding of an area of such land from settle-
5 ment, sale, or entry under some or all of the general land
6 laws.

7 TITLE II—PLANNING FUTURE PUBLIC

8 LAND USE

9 INVENTORY AND IDENTIFICATION

10 SEC. 201. (a) The Secretary shall prepare and main-
11 tain on a continuing basis, to reflect changes in conditions
12 and identifications of resource values, an inventory of all
13 public lands and their resources, giving priority to areas
14 of critical environmental concern. The preparation and main-
15 tenance of such inventory of the identification of such areas
16 shall not, of itself, change or prevent change of the man-
17 agement or use of public lands.

18 (b) As funds are made available, the Secretary shall as-
19 certain the boundaries of the public lands, provide means of
20 public identification thereof including, where appropriate,
21 signs and maps, and provide State and local governments
22 with data from the inventory for the purpose of planning
23 and regulating the uses of non-Federal lands in proximity
24 to such public lands.

2 SEC. 202. (a) The Secretary shall develop, maintain,
3 and, when appropriate, revise land use plans which provide
4 by tracts or areas for the use of all public lands. Land use
5 plans shall be developed for all public lands regardless of
6 whether such lands previously have been classified, with-
7 drawn, set aside, or otherwise designated for one or more
8 uses.

(1) use and observe the principles of multiple use and sustained yield set forth in subsections (c) and (h) of section 103;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and social sciences ;

(3) give priority to the designation and protection of areas of critical environmental concern;

19 (4) consider present and potential uses of the
20 public lands;

(5) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

24 (6) weigh long-term benefits to the public against
25 short-term benefits;

1 (7) provide for compliance with applicable pollu-
2 tion control laws, including State and Federal air, water,
3 noise, or other pollution standards or implementation
4 plans; and

5 (8) when not inconsistent with the purposes for
6 which the public lands are dedicated and administered,
7 coordinate the land use inventory, planning, and man-
8 agement activities of or for public lands with the land
9 use planning processes of the States and local govern-
10 ments within which the public lands are located.

11 (c) Any classification of public lands or any land use
12 plan in effect on the date of enactment of this Act is sub-
13 ject to review in the land use planning process conducted
14 under this section, and all public lands, regardless of classifi-
15 cation, are subject to inclusion in any land use plan developed
16 pursuant to this section.

17 (d) With respect to public lands designated for reten-
18 tion in Federal ownership, the Secretary, shall manage such
19 public lands under principles of multiple use and sustained
20 yield, in accordance with the land use plan developed by
21 him under this section when it is available, except that where
22 a tract of such public land has been dedicated to specific
23 uses according to any other provision of law, it shall be
24 managed in accordance with such law.

25 (e) If as a result of land use planning a management

1 decision is made to exclude one or more principal or major
2 uses for two years or more, action implementing that decision
3 on tracts of land in excess of fifty thousand acres shall be
4 reported to the House of Representatives and the Senate;
5 however, action implementing that decision on tracts of land
6 of one hundred thousand acres or more shall terminate and
7 become ineffective if before the end of ninety days (not
8 counting days on which the House of Representatives or the
9 Senate has adjourned for more than three consecutive days)
10 beginning on the date the Secretary has submitted notice of
11 such implementing action to the Senate and House of Rep-
12 resentatives either House has adopted a resolution stating
13 that that House does not approve of such action.

14 (f) (1) In managing the public lands under a land
15 use plan the Secretary shall regulate, through permits, li-
16 censes, leases, or other instruments as the Secretary deems
17 appropriate, the use, occupancy, and development of the
18 public lands. The Secretary shall permit hunting and fishing
19 on lands and waters under his jurisdiction within the bound-
20 aries of the public lands in accordance with applicable laws
21 of the United States and the States wherein the lands and
22 waters are located, except the Secretary may designate zones
23 where, and establish periods when, no hunting and fishing
24 shall be permitted for reasons for public safety, administra-

1 tion, or public use and enjoyment. Except in emergencies,
2 any regulations of the Secretary pursuant to this section shall
3 be put into effect only after consultation with the appropriate
4 State fish and game department. Nothing in this Act shall
5 modify or change any Federal law relating to migratory
6 birds. No provision of this section or any other section of
7 this Act shall in any way amend the Mining Law of 1872
8 or impair the rights of any locators or claims under that Act,
9 except as provided in section 207 of this Act.

10 (2) The Secretary shall insert in any permit, license,
11 lease, or other instrument providing for the use, occupancy,
12 or development of the public lands a provision authorizing
13 revocation or suspension, after notice and hearing, of such
14 permit, license, lease, or other document upon a final admin-
15 istrative finding of a violation of any regulation issued by
16 the Secretary under any Act applicable to the public lands
17 or upon final administrative finding of a violation on such
18 lands of any applicable State or Federal air or water quality
19 standard or implementation plan. The Secretary may order
20 an immediate temporary suspension prior to a hearing or
21 final administrative finding if he determines that such a
22 suspension is necessary to protect public health or safety or
23 the environment. When other applicable law contains spe-
24 cific provisions for suspension, revocation, or cancellation of

1 a permit, license, or other document authorizing use, occu-
2 pancy, or development of the public lands the specific provi-
3 sions of such law shall prevail.

4 (g) The Secretary shall allow an opportunity for pub-
5 lic involvement and participation and by regulation shall
6 establish procedures, including public hearings where ap-
7 propriate, to give Federal, State, and local governments and
8 the public, adequate notice and opportunity to comment upon
9 the formulation of standards and criteria in the preparation
10 and execution of plans and programs and in the management
11 of the public lands.

12

SALES

13 SEC. 203. (a) A tract of the public lands (except land
14 designated as wilderness) may be sold where, as a result of
15 land use planning required under section 202, the Secretary
16 determines that—

17 (1) such tract of the public lands is isolated, is
18 difficult and uneconomic to manage as part of the public
19 lands, and is not suitable for management by another
20 Federal agency;

21 (2) such tract of the public lands was acquired for
22 a specific purpose and the tract is no longer required for
23 that or any other Federal purpose; or

24 (3) disposal of such tract of the public lands will
25 serve important public objectives which cannot be

1 achieved prudently or feasibly on land other than public
2 land and which outweigh other public objectives and
3 values, including recreation and scenic values, which
4 would be served by maintaining such tract in Federal
5 ownership.

6 (b) Where a tract of the public lands in excess of two
7 thousand five hundred acres has been designated for sale,
8 such sale may be made only after the end of the ninety days
9 (not counting days on which the House of Representatives
10 or the Senate has adjourned for more than three consecutive
11 days) beginning on the day the Secretary has submitted
12 notice of such designation to the Senate and the House of
13 Representatives, and then only if neither House has adopted
14 a resolution stating that that House does not approve of such
15 designation.

16 (c) Sales of public lands shall be made at a price not
17 less than the fair market value as determined by the
18 Secretary.

19 (d) Sales of public lands under this section shall be
20 conducted under competitive bidding procedures to be estab-
21 lished by the Secretary. However, where the Secretary
22 determines it necessary and proper in order (1) to assure
23 equitable distribution among purchasers of lands, or (2) to
24 recognize equitable considerations or public policies, including
25 but not limited to a preference to users, he may sell those

1 lands with modified competitive bidding or without competi-
2 tive bidding. In recognizing public policies, the Secretary
3 shall first offer the tract of land being sold to the State in
4 which the land is located, and then, if not sold, to a local
5 government entity in such State and in the vicinity of the
6 land to be disposed. After a tract of land has been offered
7 for sale according to the preceding sentence, and is not sold,
8 it may be offered for sale to the general public, with the
9 Secretary giving consideration to the following potential
10 purchasers:

- 11 (1) adjoining landowners;
- 12 (2) individuals; and
- 13 (3) any other person.

14 (e) The Secretary shall accept or reject, in writing,
15 any offer to purchase made through competitive bidding at
16 his invitation no later than thirty days after the receipt
17 of such offer or, in the case of a tract in excess of two thou-
18 sand five hundred acres, at the end of thirty days after
19 the end of the ninety-day period provided in subsection (b)
20 of this section, whichever is later unless the offeror waives
21 his right to a decision within such thirty-day period. Prior to
22 the expiration of such periods the Secretary may refuse
23 to accept any offer or may withdraw any land or interest
24 in land from sale under this section when he determines that
25 consummation of the sale would not be consistent with this

1 Act or other applicable law. If the Secretary does not accept
2 or reject an offer as required by this section the offer shall
3 be deemed accepted.

4 (f) The Secretary of the Interior shall issue all patents
5 or other documents of conveyance after any disposal author-
6 ized by this Act. The Secretary shall insert in any such patent
7 or other document of conveyance he issues, except in the case
8 of land exchanges, for which the provisions of subsection 206
9 (b) of this Act shall apply, such terms, covenants, condi-
10 tions, and reservations as he deems necessary to ensure proper
11 land use and protection of the public interest. The Secretary
12 may correct such patents or documents where necessary. In
13 addition, the Secretary may make corrections on any docu-
14 ments of conveyance which have heretofore been issued by
15 the Federal Government on public lands.

16 (g) All conveyances of title issued by the Secretary of
17 the Interior, except those involving land exchanges provided
18 for in section 206, shall reserve to the United States all
19 minerals in the lands, together with the right to prospect for,
20 mine, and remove the minerals under applicable law and
21 such regulations as the Secretary may prescribe, except as
22 provided in section 206, and except further that if the
23 Secretary makes the findings specified in section 209 (a),
24 the minerals may then be conveyed to the surface owner

1 or prospective surface owner, as the case may be, as pro-
2 vided in section 209.

3 (h) The Secretary shall not make conveyances of public
4 lands which would be in conflict with State and local land
5 use plans, programs, zoning, and regulations. At least sixty
6 days prior to offering for sale or otherwise conveying public
7 lands under this Act, each Secretary shall notify the Governor
8 of the State within which such lands are located and the
9 head of the governing body of any political subdivision of the
10 State having zoning or other land use regulatory jurisdiction
11 in the geographical area within which such lands are located,
12 in order to afford the appropriate body the opportunity to
13 zone or otherwise regulate, or change or amend existing
14 zoning or other regulations concerning the use of such lands
15 prior to such conveyance.

16 (i) No tract of land may be disposed of under this Act,
17 whether by sale, exchange, or donation, to any person who
18 is not a citizen of the United States, or in the case of a cor-
19 poration, is not subject to the laws of any State or of the
20 United States.

21 (j) The Act of July 31, 1958 (72 Stat. 438, 7 U.S.C.
22 1012a, 16 U.S.C. 478a), is amended to read as follows:
23 "When the Secretary of Agriculture determines that a tract
24 of National Forest System land is located adjacent to or con-
25 tiguous to an established community, and that transfer of

1 such land would serve community objectives that outweigh
2 the public objectives and values which would be served by
3 maintaining such tract in Federal ownership, he may, upon
4 application, set aside and designate as a townsite an area
5 of not to exceed six hundred and forty acres of National
6 Forest System land for any one application. After public
7 notice, and satisfactory showing of need therefor by any
8 county, city, or other local governmental subdivision, the
9 Secretary may offer such area for sale to a governmental sub-
10 division at a price not less than the fair market value thereof.
11 The Secretary shall condition conveyances of townsites upon
12 the enactment, maintenance, and enforcement of a valid
13 ordinance which assures any land so conveyed will be con-
14 trolled by the governmental subdivision so that use of the
15 area will not interfere with the protection, management, and
16 development of adjacent or contiguous National Forest Sys-
17 tem lands."

18

WITHDRAWALS

19 SEC. 204. (a) On and after the date of enactment of
20 this Act—

21 (1) a tract of public lands, or of lands within the
22 National Forest System, of five thousand acres or more
23 may be withdrawn only for a period of not more than
24 five years (or such a withdrawal may be extended) by
25 the Secretary on his own motion or upon request by an

1 agency head, except where the provisions of subsection
2 (b) (1) of this section apply; however, such withdrawal
3 shall terminate and become ineffective if before the end
4 of ninety days (not counting days on which the Senate
5 or the House of Representatives has adjourned for more
6 than three consecutive days) beginning on the day notice
7 of such withdrawal has been submitted to the Senate and
8 the House of Representatives, and either House has
9 adopted a resolution stating that that House does not
10 approve of the withdrawal; and

11 (2) a tract of public land, or of lands within the
12 National Forest System, of less than five thousand acres
13 may be withdrawn by the Secretary on his own motion
14 or upon request by an agency head—

15 (A) for a period of not more than ten years
16 for a nonresource use; or

17 (B) for a period of not more than five years
18 to preserve such tract for a specific use then under
19 consideration by the Congress.

20 All withdrawals and extensions thereof made under para-
21 graphs (1) and (2) of this subsection shall be reviewed by
22 the Secretary toward the end of the withdrawal period (with
23 a copy of the report on such review being at that time sent
24 to the Committees on Interior and Insular Affairs of the
25 House of Representatives and the Senate), and may be

1 extended only if the Secretary determines that the purpose
2 for which the withdrawal was first made requires the exten-
3 sion, and then only for a period no longer than the length of
4 the original withdrawal period.

5 (b) (1) When the Secretary determines, or when the
6 Committee on Interior and Insular Affairs of either the
7 House of Representatives or the Senate notifies the Sec-
8 retary, that an emergency situation exists and that extraor-
9 dinary measures must be taken to preserve values that
10 would otherwise be lost pending administrative or legisla-
11 tive action, the Secretary shall immediately make an emer-
12 gency withdrawal and file notice of such emergency with-
13 drawal with the Committees on Interior and Insular Affairs
14 of the Senate and of the House of Representatives. Such
15 emergency withdrawal shall be effective when made but
16 shall last only for a period not to exceed two years, and
17 may not be extended if either House has adopted a resolu-
18 tion stating that that House does not approve the extension.

19 (2) Within three months after filing the notice under
20 paragraph (1), the Secretary shall furnish to the Com-
21 mittees—

22 (A) a clear explanation of the proposed use of
23 the land involved which created the emergency situ-
24 ation leading to the emergency withdrawal;

25 (B) an inventory and evaluation of the current

1 natural resource uses and values of the site and adjacent
2 public and nonpublic land and how it appears they will
3 be affected by the proposed use, including particularly
4 aspects of use that might cause degradation of the envi-
5 ronment;

6 (C) an identification of present users of the land
7 involved, and how they will be affected by the proposed
8 use;

9 (D) an analysis of the manner in which existing
10 and potential resource uses and users are incompatible
11 with or in conflict with the proposed use, together with
12 a statement of the provisions to be made for continuation
13 or termination of existing uses;

14 (E) an analysis of the manner in which such
15 lands will be used in relation to the specific require-
16 ments for the proposed use;

17 (F) a statement as to whether any suitable al-
18 ternate sites are available (including cost estimates)
19 for the proposed use or for uses such a withdrawal would
20 displace;

21 (G) a statement of the consultation which has
22 been or will be had with other Federal agencies, with
23 regional, State, and local government bodies, and with
24 other appropriate individuals and groups;

25 (H) a statement indicating the effect of the pro-

1 posed uses, if any, on State and local government in-
2 terests and the regional economy;

3 (I) a statement of the expected length of time
4 needed for the withdrawal;

5 (J) the time and place of hearings and of other
6 public involvement concerning such withdrawal; and

7 (K) the place where the records on the withdrawal
8 can be examined by interested parties.

9 (c) Notwithstanding section 553 (a) (2) of title 5 of
10 the United States Code (relating to administrative proce-
11 dures) all new withdrawals made by the Secretary under
12 this section (except an emergency withdrawal made under
13 subsection (b) (1) of this section) shall be promulgated
14 on the record after an opportunity for an agency hearing.

15 (d) In the case of lands within the National Forest
16 System, the Secretary shall make withdrawals at the request
17 of and only with the consent of the Secretary of Agriculture,
18 except when the provisions of subsection (b) (1) of this
19 section apply.

20 ACQUISITION OF LAND

21 SEC. 205. (a) Notwithstanding any other provision
22 of law, the Secretary, with respect to the public lands
23 and the Secretary of Agriculture, with respect to units of
24 the National Forest System, are authorized to acquire, by
25 purchase, exchange, donation, or by eminent domain lands or

1 interests therein: *Provided*, That with respect to the public
2 lands, the Secretary may exercise the power of eminent
3 domain only if necessary to secure access to public lands, and
4 then only if the lands so acquired are confined to as narrow
5 a corridor as is necessary to serve such purpose. Nothing in
6 this subsection shall be construed as limiting the authority
7 of the Secretary of Agriculture to acquire land by eminent
8 domain.

9 (b) Acquisitions pursuant to this section shall be con-
10 sistent with the mission of the department involved and with
11 applicable land-use plans.

12 (c) Lands and interests in lands acquired by the Secre-
13 tary pursuant to this section or section 206 shall, upon
14 acceptance of title, become public lands, and, for the admin-
15 istration of public land laws not repealed by this Act, shall
16 remain public lands. If such acquired lands or interests in
17 lands are located within the exterior boundaries of a grazing
18 district established pursuant to the first section of the Act of
19 June 28, 1934 (43 U.S.C. 315) (commonly known as the
20 "Taylor Grazing Act"), they shall become a part of that
21 district. Lands and interests in lands acquired pursuant to
22 this section which are within boundaries of the National
23 Forest System may be transferred to the Secretary of Agri-
24 culture for administration as part of, and in accordance with

1 laws, rules, and regulations applicable to the National Forest
2 System.

3 EXCHANGES

4 SEC. 206. Anything set forth in section 203 (a) through
5 (g) to the contrary notwithstanding and without compliance
6 with the provisions of section 203 (a) through (g) :

7 (a) A tract of public land or interests therein may be
8 disposed of by exchange by the Secretary and a tract of land
9 or interests therein within the National Forest System may
10 be disposed of by exchange by the Secretary of Agriculture
11 where the Secretary concerned determines that the national
12 interest will be best served and better land management
13 will result by making that exchange: *Provided*, That lands
14 which are part of the National Forest System may be ex-
15 changed under the authority of this section only for lands
16 within units of the National Forest System.

17 (b) In exercising the exchange authority granted by
18 subsection (a) or by section 205 (a), the Secretary con-
19 cerned may accept title to any non-Federal land or interests
20 therein and in exchange therefor he may convey to the
21 grantor of such land, or interests, any lands or interests
22 therein which he finds proper for transfer out of Federal
23 ownership and which are located in the same State as the
24 non-Federal land to be acquired. The values of the lands

1 so exchanged either shall be equal, or if they are not equal,
2 the values shall be equalized by the payment of money to
3 the grantor or to the Secretary concerned as the circum-
4 stances require so long as payment does not exceed 20 per
5 centum of the total value of the lands transferred out of
6 Federal ownership. The Secretary concerned shall make
7 every effort to reduce the amount of the payment of money
8 to as small an amount as possible.

9 (c) Lands acquired by exchange under this section by
10 the Secretary which are within the boundaries of the
11 National Forest System may be transferred to the Secre-
12 tary of Agriculture for administration as part of, and in
13 accordance with laws, rules, and regulations applicable to
14 the National Forest System. Lands acquired by exchange by
15 the Secretary under this section which are within the
16 boundaries of national park, wildlife refuge, wild and
17 scenic rivers, trails, or any other system established by
18 Act of Congress may be transferred to the appropriate agency
19 head for administration as part of, and in accordance with
20 the laws, rules, and regulations applicable to such system.

21 **RECORDATION OF MINING CLAIMS AND ABANDONMENT**

22 **SEC. 207. (a)** The owner of an unpatented lode or
23 placer mining claim located prior to the date of this Act
24 shall, within the three-year period following the date of the
25 enactment of this Act and prior to December 31 of each year

1 thereafter, file the instruments required by paragraphs (1)
2 and (2) of this subsection. The owner of an unpatented lode
3 or placer mining claim located after the date of this Act
4 shall, prior to December 31 of each year following the calen-
5 dar year in which the said claim was located, file the in-
6 struments required by paragraphs (1) and (2) of this sub-
7 section.

8 (1) File for record in the office where the location notice
9 or certificate is recorded either a notice of intention to hold
10 the mining claim (including but not limited to such notices as
11 are provided by law to be filed when there has been a suspen-
12 sion or deferment of annual assessment work), an affidavit of
13 assessment work performed thereon, or a detailed report
14 provided by the Act of September 2, 1958 (72 Stat. 1701),
15 relating thereto.

16 (2) File in the office of the Bureau of Land Manage-
17 ment designated by the Secretary a copy of the official record
18 of the instrument filed or recorded pursuant to paragraph (1)
19 of this subsection.

20 (b) The owner of an unpatented lode or placer mining
21 claim located prior to the date of enactment of this Act shall,
22 within the three-year period following the date of enactment
23 of this Act, file in the office of the Bureau of Land Manage-
24 ment designated by the Secretary a copy of the official rec-
25 ord of the notice of location or certificate of location. The

1 owner of an unpatented lode or placer mining claim located
2 after the date of enactment of this Act shall, within ninety
3 days after the date of location of such claim, file in the office
4 of the Bureau of Land Management designated by the Secre-
5 tary a copy of the official record of the notice of location or
6 certificate of location.

7 (c) The failure to file such instruments as required by
8 subsections (a) and (b) shall be deemed conclusively to
9 constitute an abandonment of the mining claim by the owner;
10 but there shall, however, be no abandonment if the instru-
11 ment is defective or not timely filed for record under
12 other Federal laws permitting filing or recording thereof,
13 or if the instrument is filed for record by or on behalf of
14 some but not all of the owners of the mining claim.

15 RECORDABLE DISCLAIMERS OF INTEREST IN LAND

16 SEC. 208. (a) After consulting with any affected
17 Federal agency, the Secretary is authorized to issue a docu-
18 ment of disclaimer of interest or interests in any lands in any
19 form suitable for recordation, where the disclaimer will help
20 remove a cloud on the title of such lands or where he deter-
21 mines (1) a record interest of the United States in lands
22 has terminated by operation of law; or (2) the lands lying
23 between the meander line shown on a plat of survey
24 approved by the Bureau of Land Management or its pred-
25 ecessors and the actual shoreline of a body of water are not

1 lands of the United States; or (3) accreted, relicted, or
2 avulsed lands are not lands of the United States.

3 (b) No document of disclaimer shall be issued pursuant
4 to this section unless the applicant therefor has filed with
5 the Secretary an application in writing and notice of such
6 application setting forth the grounds supporting such appli-
7 cation has been published in the Federal Register at least
8 ninety days preceding the issuance of such disclaimer and
9 until the applicant therefor has paid to the Secretary the
10 administrative costs of issuing the disclaimer as determined
11 by the Secretary. All receipts shall be deposited to the then-
12 current appropriation from which expended.

13 (c) Issuance of a document of disclaimer by the Secre-
14 tary pursuant to the provisions of this section and regulations
15 promulgated hereunder shall have the same effect as a quit-
16 claim deed from the United States.

17 CONVEYANCE OF RESERVED MINERAL INTERESTS

18 SEC. 209. (a) The Secretary, after consultation
19 with the appropriate agency head, may convey mineral
20 interests owned by the United States where the surface is
21 in non-Federal ownership, regardless of which Federal
22 agency may have administered the surface, if he finds (1)
23 that there are no known mineral values in the land, or (2)
24 that the reservation of the mineral rights in the United States
25 is interfering with or precluding appropriate nonmineral

1 development of the land and that such development is a more
2 beneficial use of the land than mineral development.

3 (b) Conveyance of mineral interests pursuant to this
4 section shall be made only to the record owner of the surface,
5 upon payment of administrative costs and the fair market
6 value of the interests being conveyed, giving consideration to
7 the reverter provided for in subsection (c) of this section.

8 (c) The document of conveyance for any mineral in-
9 terests transferred pursuant to this section shall provide that,
10 in the event that mineral development activities are initiated,
11 the mineral interests of the owner or owners of the parcel
12 of land on which such activities are initiated, together with
13 the right to prospect for, mine, and remove the minerals
14 under applicable law and such regulations as the Secretary
15 may prescribe, shall revert to the United States.

16 (d) Before considering an application for conveyance
17 of mineral interests pursuant to this section the Secretary
18 shall require the deposit of a sum of money which he deems
19 sufficient to cover administrative costs including, but not
20 limited to, costs of conducting an exploratory program to
21 determine the character of the mineral deposits in the land,
22 evaluating the data obtained under the exploratory program
23 to determine the fair market value of the mineral interests to
24 be conveyed, and preparing and issuing the documents of
25 conveyance. If the administrative costs exceed the deposit,

1 the applicant shall pay the outstanding amount; and if the
2 deposit exceeds the administrative costs, the applicant shall
3 be given a credit for or refund of the excess.

4 (e) Moneys paid to the Secretary for administrative
5 costs pursuant to subsection (d) shall be paid to the agency
6 which rendered the service and deposited to the appropriation
7 then current.

8 **GRAZING FEES**

9 SEC. 210. (a) Notwithstanding any other provision of
10 law, the Secretary with respect to the grazing of domestic
11 livestock on the public lands and the Secretary of Agricul-
12 ture with respect to the grazing of domestic livestock on lands
13 administered by him under the Act of April 24, 1950
14 (16 U.S.C. 580), shall charge an annual fee for such grazing
15 which shall be computed as follows; except that in no event
16 shall such fee be set at less than \$2 per animal unit month
17 of grazing:

18 (1) The fair market value of grazing domestic live-
19 stock on such lands for the period 1964-1968, which shall
20 be the base period, shall be the amount that was determined
21 to be fair market value for the year 1966 by the Depart-
22 ment of the Interior and the Department of Agriculture in
23 the Westernwide Livestock Grazing Survey.

24 (2) The fair market value for such base period shall,
25 after the date of enactment of this Act, be adjusted each

1 year according to a combined index of prices received for
2 beef cattle during the preceding year and the average monthly
3 rate per head for pasturing cattle on privately owned land
4 for the preceding year as collected for the eleven Western
5 States by the Statistical Reporting Service of the Department
6 of Agriculture.

7 (b) The term "animal unit month of grazing" as used
8 in this section means the forage required by the grazing
9 of one cow and calf or its equivalent for a period of one
10 month. One cow shall, for the purpose of this definition,
11 be considered the equivalent of one horse or five sheep or
12 goats.

13 (c) (1) Fifty per centum of all moneys received by the
14 United States as fees for grazing domestic livestock on such
15 lands under the provisions of this section shall be credited
16 to a separate account in the Treasury, one-half of which is
17 authorized to be appropriated and made available for use
18 in the district, region, or national forest from which such
19 moneys were derived, as the respective Secretary may direct
20 after consultation with district, regional, or national forest
21 user representatives, for the purpose of actual range rehabili-
22 tation, protection, and improvements on such lands, and the
23 remaining one-half shall be used for range rehabilitation,
24 protection, and improvements as the Secretary concerned
25 directs. Any funds so appropriated shall be in addition to any

1 other appropriations made to the respective Secretary for
2 range management. Such improvements shall include all
3 forms of range land management including but not limited to,
4 seeding and reseeding, fence construction, weed control,
5 water development, and fish and wildlife habitat enhance-
6 ment as the respective Secretary may direct after consulta-
7 tion with district, regional, or national forest user repre-
8 sentatives.

9 (2) The first clause of section 10 (b) of the Taylor
10 Grazing Act (48 Stat. 1269) , as amended (43 U.S.C. 315) ,
11 is hereby repealed. All distributions of moneys made under
12 section 2 (c) (1) of this Act shall be in addition to distribu-
13 tions made under section 10 of the Taylor Grazing Act and
14 shall not apply to distribution of moneys made under section
15 11 of that Act. The remaining moneys received by the
16 United States as fees for grazing domestic livestock shall
17 be deposited in the Treasury as miscellaneous receipts.

18 DURATION OF GRAZING LEASES

19 SEC. 211. (a) Permits and leases for domestic live-
20 stock grazing on lands described in subsection 210 (a) of this
21 Act shall be issued for a term of ten years subject to grazing
22 capacity except as provided in subsection (b) .

23 (b) Shorter permit or lease terms may be granted
24 where—

25 (1) the land is pending disposal; or

1 (2) the land will be devoted to a public purpose
2 prior to the end of the ten-year term.

3 (c) All permits and leases shall incorporate an allot-
4 ment management plan, if available, which has been devel-
5 oped for such lands only, after consultation with permittees.

6 (d) Nothing contained herein shall be construed as re-
7 stricting the authority of the Secretary concerned to cancel,
8 suspend or modify a grazing permit or lease, in whole or in
9 part, pursuant to the terms or conditions thereof, or to cancel
10 or suspend a grazing permit or lease, or for any violation of a
11 grazing regulation or of any term or condition of such
12 grazing permit or lease.

13 (e) Whenever a permit or lease for grazing domestic
14 livestock is canceled in whole or in part, in order to devote
15 the lands covered by the permit or lease to another public
16 purpose, including disposal, the permittee or lessee shall re-
17 ceive a reasonable compensation from the United States, to be
18 determined by the respective Secretary, but not to exceed the
19 fair market value of the terminated portion of the permittee's
20 or lessee's interest therein, for the loss of any interest in an
21 authorized permanent improvement placed or constructed on
22 the lands covered by such permit or lease by the permittee or
23 lessee. Except in cases of emergency, no permit or lease shall
24 be canceled under this subsection without two years' prior
25 notification.

1 (f) So long as the lands for which the permit or lease
2 is issued remain available for domestic livestock grazing,
3 no permittee or lessee complying with the rules and regula-
4 tions promulgated by the respective Secretary and who has
5 complied with the terms and conditions of the permit or
6 lease shall be denied the renewal of such permit or lease.

7 GRAZING DISTRICT ADVISORY BOARDS

8 SEC. 212. The provisions of section 14 of the Federal
9 Advisory Committee Act (5 U.S.C. App. 1) shall not be
10 construed as having applied or to apply in the case of those
11 grazing district advisory boards established pursuant to the
12 provisions of section 18 of the Act of June 28, 1934 (48
13 Stat. 1269).

14 **TITLE III—BUREAU OF LAND MANAGEMENT**

15 ESTABLISHMENT OF BUREAU

16 SEC. 301. (a) There is established within the Depart-
17 ment of the Interior a Bureau of Land Management (here-
18 inafter in this Act referred to as the "Bureau") which
19 shall have as its head a Director who shall be appointed by
20 the President, by and with the advice and consent of the
21 Senate. The Director of the Bureau shall have a broad back-
22 ground and substantial experience in public land and natural
23 resource management. He shall carry out such functions and
24 shall perform such duties as the Secretary may prescribe with
25 respect to the management of lands and resources under his

1 jurisdiction according to the applicable provisions of this Act
2 and any other applicable law.

3 (b) Subject to the discretion granted to him by Reorga-
4 nization Plan Numbered 3 of 1950 (5 U.S.C. 481 Note),
5 the Secretary shall carry out through the Bureau all
6 functions, powers, and duties vested in him and relating
7 to the management of public lands which, on the date
8 of enactment of this section, were carried out by him through
9 the Bureau of Land Management established by section 403
10 of Reorganization Plan Numbered 3 of 1946. Any reference
11 in any law, document, regulation, or other paper of the
12 United States to the Bureau of Land Management shall be
13 deemed to be a reference to the Bureau established by this
14 section.

15 (c) In addition to the Director, there shall be an Asso-
16 ciate Director of the Bureau and so many Assistant Direc-
17 tors, and other employees, as may be necessary, who shall
18 be appointed by the Secretary subject to the provisions of
19 title 5, United States Code, governing appointments in the
20 competitive service, and shall be paid in accordance with
21 the provisions of chapter 51 and subchapter 3 of chapter 53
22 of such title relating to classification and General Schedule
23 pay rates.

24 (d) No suit, action, or other judicial proceeding, and
25 no administrative action or proceeding, lawfully commenced

1 on or before the date of enactment of this section, and in-
2 volving or relating to the Bureau of Land Management
3 established under section 403 of Reorganization Plan Num-
4 bered 3 of 1946 shall abate by reason of the enactment of
5 this section. Nothing in this section shall affect any regula-
6 tion of the Secretary with respect to the administration of
7 the public lands administered by him through the Bureau of
8 Land Management on the date of enactment of this section.

9 **ENFORCEMENT AUTHORITY**

10 **SEC. 302. (a)** Any person who violates—

11 (1) any regulation issued by the Secretary with
12 respect to the management, use, protection, develop-
13 ment, acquisition, or conveyancing of the public lands,
14 including the property located thereon;

15 (2) any provision of a permit, lease, license, or
16 other document issued by the Secretary with respect to
17 the use, occupancy, or development of such public lands;
18 or

19 (3) any provision of this Act;
20 shall be fined not more than \$1,000 or imprisoned for not
21 longer than twelve months, or both. Any person charged
22 with a violation of such regulation may be tried and sen-
23 tenced by any United States magistrate designated for that
24 purpose by the court by which he was appointed, in the
25 same manner and subject to the same conditions and limi-

1 tations as provided for in section 3401 of title 18 of the
2 United States Code.

3 (b) At the request of the Secretary, the Attorney Gen-
4 eral may institute a civil action in any United States dis-
5 trict court for an injunction or other appropriate order to
6 prevent any person from utilizing those public lands in
7 violation of regulations issued by the Secretary under this
8 Act.

9 (c) For the specific purpose of enforcing any Federal
10 law or regulation relating to those public lands or re-
11 sources managed by him, the Secretary may designate an
12 employee who has had specialized law enforcement train-
13 ing to (1) execute and serve any warrant or other process
14 issued by a court or officer of competent jurisdiction; (2)
15 make arrests without warrant or process for a misdemeanor
16 he has reasonable grounds to believe is being committed in
17 his presence or view, or for a felony if he has reasonable
18 grounds to believe that the person to be arrested has com-
19 mitted or is committing such felony; (3) carry firearms
20 (so long as the employee has been specifically trained to
21 handle firearms, and then only to the extent necessary to
22 carry out his responsibilities while actually on duty); (4)
23 search without warrant or process any person, place, or con-
24 veyance according to any law or rule of law; and (5)

1 seize without warrant or process any evidentiary item as
2 provided by law.

3 COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT

4 AGENCIES

5 SEC. 303. In connection with administration and regula-
6 tion of the use and occupancy of the public lands, the Secre-
7 tary may cooperate with the regulatory and law enforcement
8 officials of any State or political subdivision thereof. Such
9 cooperation may include reimbursement to a State or its sub-
10 division for expenditures incurred by it in connection with
11 activities which assist in the administration and regulation
12 of use and occupancy of those public lands.

13 SERVICE CHARGES, REIMBURSEMENT PAYMENTS, AND

14 EXCESS PAYMENTS

15 SEC. 304. (a) Notwithstanding any other provision of
16 law, the Secretary may establish filing fees, service fees and
17 charges, and commissions with respect to applications and
18 other documents relating to the public lands and may change
19 and abolish such fees, charges, and commissions.

20 (b) The Secretary is authorized to require a deposit of
21 any payments intended to reimburse the United States for
22 extraordinary costs with respect to applications and other
23 documents relating to such lands. The moneys received for
24 extraordinary costs under this subsection shall be deposited

1 with the Treasury in a special account and are hereby author-
2 ized to be appropriated and made available until expended.
3 As used in this subsection, "extraordinary costs" include but
4 are not limited to the costs of special studies; environmental
5 impact statements; monitoring construction, operation, main-
6 tenance, and termination of any authorized facility; or other
7 special activities.

8 (c) In any case where it shall appear to the satisfaction
9 of the Secretary that any person has made a payment under
10 any statute relating to the sale, lease, use, or other disposi-
11 tion of public lands which is not required or is in excess of the
12 amount required by applicable law and the regulations issued
13 by the Secretary, the Secretary, upon application or other-
14 wise, may cause a refund to be made from applicable funds.

15 DEPOSITS AND FORFEITURES

16 SEC. 305. (a) Any moneys received by the United
17 States as a result of the forfeiture of a bond or other security
18 by a resource developer or purchaser or permittee who does
19 not fulfill the requirements of his contract or permit or does
20 not comply with the regulations of the Secretary; or as a
21 result of a compromise or settlement of any claim whether
22 sounding in tort or in contract involving present or potential
23 damage to the public lands shall be credited to a separate
24 account in the Treasury and are hereby authorized to be
25 appropriated and made available, until expended as the Secre-

1 tary may direct, to cover the cost to the United States of any
2 improvement, protection, or rehabilitation work on those
3 public lands which has been rendered necessary by the action
4 which has led to the forfeiture, compromise, or settlement.

5 (b) Any moneys collected under this Act in connection
6 with lands administered under the Act of August 28, 1937
7 (43 U.S.C. 1181a-1181j), shall be expended for the benefit
8 of such land only.

9 (d) If any portion of a deposit or amount forfeited under
10 this Act is found by the Secretary to be in excess of the
11 cost of doing the work authorized under this Act, the
12 Secretary, upon application or otherwise, may cause a re-
13 fund of the amount in excess to be made from applicable
14 funds.

15 WORKING CAPITAL FUND

16 SEC. 306. (a) There is hereby established a working
17 capital fund for the management of the public lands. This fund
18 shall be available without fiscal year limitation for expenses
19 necessary for furnishing, in accordance with the Federal
20 Property and Administrative Services Act of 1949 (63 Stat.
21 377), and regulations promulgated thereunder, supplies and
22 equipment services in support of Bureau programs, including
23 but not limited to, the purchase or construction of storage
24 facilities, equipment yards, and related improvements and the
25 purchase, lease, or rent of motor vehicles, aircraft, heavy

1 equipment, and fire control and other resource management
2 equipment within the limitations set forth in appropriations
3 made to the Secretary for the Bureau.

4 (b) The initial capital of the fund shall consist of ap-
5 propriations made for that purpose together with the fair and
6 reasonable value at the fund's inception of the inventories,
7 equipment, receivables, and other assets, less the liabilities,
8 transferred to the fund. The Secretary is authorized to make
9 such subsequent transfers to the fund as he deems appropriate
10 in connection with the functions to be carried on through
11 the fund.

12 (c) The fund shall be credited with payments from
13 appropriations, and funds of the Bureau, other agencies of
14 the Department of the Interior, other Federal agencies, and
15 other sources, as authorized by law, at rates approximately
16 equal to the cost of furnishing the facilities, supplies, equip-
17 ment, and services (including depreciation and accrued an-
18 nual leave). Such payments may be made in advance in
19 connection with firm orders, or by way of reimbursement.

20 (d) There is hereby authorized to be appropriated not
21 to exceed \$3,000,000 as initial capital of the working
22 capital fund.

23 STUDIES, COOPERATIVE AGREEMENTS, AND CONTRIBUTIONS

24 SEC. 307. (a) The Secretary may conduct investiga-
25 tions, studies, and experiments, on his own initiative or in

1 cooperation with others, involving the management, protec-
2 tion, development, acquisition, and conveying of the public
3 lands.

4 (b) The Secretary may enter into contracts or coop-
5 erative agreements involving the management, protection,
6 development, and sale of public lands.

7 (c) The Secretary may accept contributions or dona-
8 tions of money, services, and property, real, personal, or
9 mixed, for the management, protection, development, acqui-
10 sition, and conveying of the public lands, including the
11 acquisition of rights-of-way for such purposes. He may
12 accept contributions for cadastral surveying performed on
13 federally controlled or intermingled lands. Moneys received
14 hereunder shall be credited to a separate account in the
15 Treasury and are hereby authorized to be appropriated and
16 made available until expended, as the Secretary may direct,
17 for payment of expenses incident to the function toward the
18 administration of which the contributions were made and
19 for refunds to depositors of amounts contributed by them
20 in specific instances where contributions are in excess of
21 their share of the cost.

22 **CONTRACTS FOR SURVEYS AND RESOURCE PROTECTION**

23 **SEC. 308.** (a) The Secretary is authorized to enter into
24 contracts for the use of aircraft, and for supplies and serv-
25 ices, prior to the passage of an appropriation therefor, for

1 airborne cadastral survey and resource protection operations
2 of the Bureau. He may renew such contracts annually, not
3 more than twice, without additional competition. Such con-
4 tracts shall obligate funds for the fiscal years in which the
5 costs are incurred.

6 (b) Each such contract shall provide that the obligation
7 of the United States for the ensuing fiscal years is contingent
8 upon the passage of an applicable appropriation, and that no
9 payment shall be made under the contract for the ensuing
10 fiscal years until such appropriation becomes available for
11 expenditure.

12 LOCAL ADVISORY COUNCILS

13 SEC. 309. (a) The Secretary is authorized and encour-
14 aged to establish for regions, States, districts, or local units
15 of the Bureau advisory councils of not less than ten and not
16 more than fifteen members appointed by him from among
17 persons who are representative of the various major citizens'
18 interests concerning the problems relating to land use plan-
19 ning or the management of the public lands located within
20 the region, State, district, or local unit for which an advisory
21 council is established. To the extent practicable there shall be
22 no overlap or duplication of such councils. Appointments
23 shall be made in accordance with rules prescribed by the
24 Secretary. The establishment and operation of an advisory
25 council established under this section shall conform to the

1 requirements of the Federal Advisory Committee Act (5
2 U.S.C. App. 1).

3 (b) Notwithstanding the provisions of subsection (a)
4 of this section, each advisory council established by the
5 Secretary under this section shall meet at least twice a year
6 with such meetings being called by the Secretary, except
7 that if no meeting has been held for a period of six months
8 the chairman of an advisory council may call a meeting. In
9 addition each such advisory council may hold additional
10 meetings as determined by the chairman or a majority
11 thereof.

12 (c) Members of advisory councils shall serve without
13 pay, except per diem will be paid each member for meetings
14 called by the Secretary.

15 (d) An advisory council shall furnish advice to the
16 Secretary with respect to the land use planning, classifica-
17 tion, retention, management, and disposal of the public lands
18 and located within such region, State district, or locality and
19 such other matters as may be referred to it by the Secretary.

20 RULES AND REGULATIONS

21 SEC. 310. The Secretary, with respect to the public
22 lands, shall promulgate rules and regulations to carry out
23 the purposes of this Act, and of other laws applicable to
24 the public lands. The promulgation of such rules and regula-
25 tions shall be governed by the provisions of chapter 5 of title

1 5 of the United States Code, without regard to section 553
2 (a) (2). Prior to the promulgation of such rules and reg-
3 ulations, such lands shall be administered under existing rules
4 and regulations concerning such lands to the extent
5 practicable.

6 ANNUAL REPORT

7 SEC. 311. The Secretary shall prepare, after appro-
8 priate consultation with other agency heads, an annual re-
9 port which he shall make available to the public and submit
10 to Congress no later than 120 days after the close of each
11 fiscal year. The report shall describe, in appropriate detail,
12 activities relating or pursuant to this Act for the fiscal year
13 just ended, any problems which may have arisen con-
14 cerning such activities, and other pertinent information
15 which will assist the accomplishment of the provisions and
16 purposes of this Act. The report shall contain a detailed
17 list and description of all transfers of lands out of Federal
18 ownership for the fiscal year just ended. It shall include
19 such tables, graphs, and illustrations as will adequately
20 reflect the fiscal year's activities, historical trends, and
21 future projections relating to such lands.

22 BUREAU OF LAND MANAGEMENT WILDERNESS STUDY

23 SEC. 312. The Secretary shall review those roadless
24 areas of 5,000 contiguous acres or more and roadless islands

1 of the public lands, and shall report to the President his rec-
2 ommendation as to the suitability or unsuitability of each
3 such area or island for preservation as wilderness. The review
4 conducted by the Secretary shall be made according to the
5 procedure specified in sections 3 (c) and 3 (d) and section
6 4 (d) (2) (with respect to mineral surveys) of the Wilder-
7 ness Act. The recommendations of the Secretary based on the
8 review conducted by him under this section shall be submitted
9 to the President from time to time. The President shall advise
10 the President of the Senate and the Speaker of the House of
11 Representatives of his recommendations with respect to the
12 designation as wilderness of each such area on which review
13 has been complete, together with a map thereof and a defi-
14 nition of its boundaries. Such advice by the President shall
15 be given with respect to not less than one-half of all the
16 areas within five years after the date of enactment of this
17 Act, and the remaining areas within ten years after the date
18 of enactment of this Act. A recommendation of the President
19 for designation as wilderness shall become effective only if
20 so provided by an Act of Congress. During the period of re-
21 view of such areas, the Secretary shall continue to adminis-
22 ter such lands according to his existing authority in a manner
23 so as to preserve the wilderness character of each such area,
24 subject only to the continuation of existing mining and graz-

1 ing uses in the manner and degree in which the same was
2 being conducted. Once an area has been designated for pres-
3 ervation as wilderness, the provisions of the Wilderness Act
4 shall apply with respect to the administration and use of such
5 designated area, including mineral development, in the same
6 manner as they apply to national forest wilderness areas.

7 **MANAGEMENT OF WILD HORSES AND BURROS**

8 SEC. 313. (a) Subsection (a) of section 3 of Public
9 Law 92-195, the Act of December 15, 1971 (16 U.S.C.
10 1333), is amended by adding "Notwithstanding any other
11 provisions of law, the Secretary is authorized to use aircraft
12 and motorized vehicles to provide for the protection, manage-
13 ment, and control of wild free-roaming horses and burros,
14 such use to be in accordance with humane procedures pre-
15 scribed by the Secretary."

16 (b) Section 3 is further amended by adding a new
17 subsection (c), as follows: "The Secretary is authorized to
18 sell or donate, without restriction, excess horses or burros
19 to individuals or organizations."

20 **TITLE IV—DESERT LANDS**

21 **CALIFORNIA DESERT CONSERVATION AREA**

22 SEC. 401. (a) The Congress finds that—

23 (1) the California desert contains historical, scenic,
24 archeological, environmental, biological, cultural, scien-

1 tific, educational, recreational and economic resources
2 that are uniquely located adjacent to an area of large
3 population;

4 (2) the desert environment is a total ecosystem that
5 is extremely fragile, easily scarred, and slowly healed;

6 (3) the desert environment and its resources, in-
7 cluding certain rare and endangered species of wildlife,
8 plants, and fishes, and numerous archeological and his-
9 toric sites, are seriously threatened by air pollution, in-
10 adequate Federal management authority, and pressures
11 of increased use, particularly recreational use, which are
12 certain to intensify because of the rapidly growing popu-
13 lation of southern California;

14 (4) the use of all desert resources can and should
15 be provided for in a multiple use and sustained yield
16 management plan to conserve these resources for future
17 generations, and to provide present and future use and
18 enjoyment, particularly outdoor recreation uses, includ-
19 ing the use, where appropriate, of off-road recreational
20 vehicles;

21 (5) the Secretary has initiated a comprehensive
22 planning process and established an interim management
23 program for the California desert; and

24 (6) to insure further study of the relationship of

1 man and the desert environment, preserve the unique
2 and irreplaceable resources, including archeological
3 values, and conserve the use of the economic resources of
4 the California desert, the public must be provided more
5 opportunity to participate in such planning and manage-
6 ment, and additional management authority must be
7 provided by the Secretary to enable effective implemen-
8 tation of such planning and management.

9 (b) It is the purpose of this section to provide for the
10 immediate and future protection and administration of the
11 California desert within the framework of a program of
12 multiple use and sustained yield, and the maintenance of
13 environmental quality.

14 (c) (1) For the purpose of this section, the term "Calif-
15 ornia desert conservation area" means the area generally
16 depicted on a map entitled "California Desert Conservation
17 Area—Proposed" dated April 1974.

18 (2) As soon as practicable after the date of enactment
19 of this Act, the Secretary shall file a map and a legal descrip-
20 tion of the California desert area with the Committees on
21 Interior and Insular Affairs of the United States Senate and
22 the House of Representatives, and such description shall have
23 the same force and effect as if included in this Act. Correction
24 of clerical and typographical errors in such legal description

1 and a map may be made by the Secretary. To the extent
2 practicable, the Secretary shall make such legal description
3 and map available to the public promptly upon request.

4 (d) The Secretary, in accordance with section 202 of
5 this Act, shall prepare and implement a comprehensive,
6 long-range plan for the management, use, development, and
7 protection of the public lands within the California desert
8 area. Such plan shall take into account the principles of multi-
9 ple use and sustained yield in providing for resource use and
10 development, including rights-of-way and mineral develop-
11 ment and the maintenance of environmental quality. Such
12 plan shall be completed and implementation thereof initiated
13 on or before June 30, 1979.

14 (e) During the period beginning on the date of enact-
15 ment of this Act and ending on the effective date of imple-
16 mentation of the comprehensive, long-range plan, the Sec-
17 retary shall execute an interim program to manage, use, and
18 protect the public lands, and their resources now in danger of
19 destruction, in the California desert area, to provide for the
20 public use of such lands in an orderly and reasonable manner
21 such as through the development of campgrounds and visitor
22 centers, and to provide for a uniformed desert ranger force.

23 (f) Subject to valid existing rights, nothing in this
24 Act shall affect the applicability of the United States mining

1 laws on the public lands within the California desert area,
2 except that all mining claims located on public lands within
3 the desert area after the date of enactment of this Act
4 shall be subject to such reasonable regulations as the Sec-
5 retary may prescribe to effectuate the purposes of this Act.
6 Any patent issued on any such mining claim shall recite
7 this limitation and continue to be subject to such regulations.
8 Such regulations shall provide for such measures as may
9 be reasonable to protect the scenic, scientific, and environ-
10 mental values of the California desert area against undue
11 impairment, and to assure against pollution of the streams
12 and waters within the desert area.

13 (g) (1) The Secretary, within sixty days after the date
14 of enactment of this Act, shall establish a California Desert
15 Conservation Area Advisory Committee (hereinafter referred
16 to as "advisory committee") in accordance with the provi-
17 sions of section 309 of this Act.

18 (2) It shall be the function of the advisory committee
19 to advise the Secretary with respect to the preparation and
20 implementation of the comprehensive, long-range plan re-
21 quired under subsection (d) of this section.

22 (h) The Secretary of Agriculture and the Secretary of
23 Defense shall manage lands within their respective jurisdic-
24 tions located in or adjacent to the California desert area, in

1 accordance with the laws relating to such lands and wherever
2 practicable, in a manner consonant with the purpose of this
3 section. The Secretary, the Secretary of Agriculture, and
4 the Secretary of Defense are authorized and directed to
5 consult among themselves and take cooperative actions to
6 carry out the provisions of this subsection, including a
7 program of law enforcement to protect the archeological
8 and other values of the area.

9 (i) The Secretary shall report to the Congress no later
10 than two years after the date of enactment of this Act, and
11 annually thereafter, on the progress in, and any problems
12 concerning, the implementation of this section, together with
13 any recommendations, which he may deem necessary, to
14 remedy such problems.

15 (j) There are authorized to be appropriated not to
16 exceed \$40,000,000 for the purpose of this section, such
17 amount to remain available until expended.

18 CONVEYANCES FOR RECREATION PURPOSES

19 SEC. 402. (a) The Recreation and Public Purposes
20 Act of 1926 (42 U.S.C. 869-4), is amended as follows:

21 (1) The second sentence of subsection (a) of the first
22 section of that Act (43 U.S.C. 869 (a)) is amended to read
23 as follows: "Before the land may be disposed of under this
24 Act it must be shown to the satisfaction of the Secretary that

1 the land is to be used for an established or definitely proposed
2 project, that the land involved is not of national significance
3 nor more than is reasonably necessary for the proposed use,
4 and that for proposals of over 640 acres comprehensive land
5 use plans and zoning regulations applicable to the area in
6 which the public lands to be disposed of are located have
7 been adopted by the appropriate State or local authority. The
8 Secretary shall allow for public involvement in all disposals,
9 including public hearings on any proposed disposal of more
10 than 640 acres under this Act.”

11 (2) Subsection (b) (i) of the first section of that Act
12 (43 U.S.C. 869 (b)) is amended to read as follows:

13 “(b) Conveyances made in any one calendar year shall
14 be limited as follows:

15 “(i) For recreational purposes:

16 “(A) To any State or the State park agency
17 or any other agency having jurisdiction over the
18 State park system of such State designated by the
19 Governor of that State as its sole representative for
20 acceptance of lands under this provision, or to any
21 political subdivision of such State, six thousand four
22 hundred acres.

23 “(B) To any nonprofit corporation or nonprofit
24 association, six hundred forty acres,

16 (4) Section 2(b) of that Act (43 U.S.C. 869-1) is
17 amended by adding “, except that leases of such lands for
18 recreational purposes shall be made without monetary con-
19 sideration” after the phrase “reasonable annual rental”.

SEC. 403. (a) The Secretary shall identify and thor-
oughly study desert areas of the public lands, other than the
California Desert Conservation Area specified in section 401
of this Act, recognizing that—

1 (1) the desert environment is a total ecosystem
2 that is extremely fragile, easily scarred, and slowly
3 healed;

4 (2) the desert environment and its resources may
5 be seriously threatened by air pollution, inadequate
6 Federal management, and pressures of increased use,
7 particularly recreational use; and

8 (3) in order to preserve the unique and irre-
9 placeable resources and conserve the use of economic
10 resources of desert areas further study of the relation-
11 ship of man and the desert environment (providing
12 greater public involvement) must be conducted.

13 (b) The Secretary shall submit a report to the Con-
14 gress, within five years after the date of enactment of this
15 Act, which shall include—

16 (1) a description (including maps) of each desert
17 area on the public lands;

18 (2) an analysis of the present condition of the total
19 ecosystem of each such desert area;

20 (3) a projection of the suitable uses which each
21 desert area could accept without damaging the total
22 ecosystem;

23 (4) an estimate of the natural resources contained
24 in the desert areas;

1 (5) a projection of the kinds of use demands which
2 are likely to be placed upon each desert area; and

3 (6) recommendations as to needed administrative
4 or legislative action which is necessary to insure that
5 Federal management of the desert areas is adequate to
6 fully protect and develop each such desert area.

7 (c) There is authorized to be appropriated not to exceed
8 \$1,500,000 for the purpose of this section.

9 TITLE V—RIGHTS-OF-WAY

10 AUTHORIZATION TO GRANT RIGHTS-OF-WAY

11 SEC. 501. (a) The Secretary, with respect to the public
12 lands and, the Secretary of Agriculture, with respect to
13 lands within the National Forest System (except in each
14 case land designated as wilderness), are authorized to grant,
15 issue, or renew rights-of-way over, upon, or through such
16 lands for—

17 (1) reservoirs, canals, ditches, flumes, laterals,
18 pipes, pipelines, tunnels, and other facilities and systems
19 for the impoundment, storage, transportation, or distri-
20 bution of water;

21 (2) pipelines and other systems for the transporta-
22 tion or distribution of liquids and gases, other than water
23 and other than oil, natural gas, synthetic liquid or
24 gaseous fuels, or any refined product produced there-

1 from, and for storage and terminal facilities in connection
2 therewith;

3 (3) pipelines, slurry and emulsion systems, and
4 conveyor belts for transportation and distribution of
5 solid materials, and facilities for the storage of such
6 materials in connection therewith;

7 (4) systems for generation, transmission, and dis-
8 tribution of electric energy, except that the applicant
9 shall also comply with all applicable requirements of the
10 Federal Power Commission under the Act of June 10,
11 1920 (16 U.S.C. 796, 797);

12 (5) systems for transmission or reception of radio,
13 television, telephone, telegraph, and other electronic
14 signals, and other means of communication;

15 (6) roads, trails, highways, railroads, canals, tram-
16 ways, airways, livestock driveways, or other means of
17 transportation; or

18 (7) such other necessary transportation or other
19 systems or facilities which are in the public interest and
20 which require rights-of-way over, upon, or through
21 such lands.

22 (b) (1) The Secretary concerned shall require, prior
23 to granting, issuing, or renewing a right-of-way, that the
24 applicant submit and disclose any or all plans, contracts,

1 agreements, or other information or material reasonably re-
2 lated to the use, or intended use, of the right-of-way which
3 he deems necessary to a determination, in accordance with
4 the provisions of this title, as to whether a right-of-way
5 shall be granted, issued, or renewed and the terms and con-
6 ditions which should be included in the right-of-way.

7 (2) If the applicant is a partnership, corporation,
8 association, or other business entity, the Secretary concerned,
9 prior to granting a right-of-way pursuant to this title, shall
10 require the applicant to disclose the identity of the partic-
11 ipants in the entity. Such disclosures shall include, where
12 applicable (A) the name and address of each partner; (B)
13 the name and address of each shareholder owning 3 per
14 centum or more of the shares, together with the num-
15 ber and percentage of any class of voting shares of the
16 entity which such shareholder is authorized to vote; and
17 (C) the name and address of each affiliate of the entity
18 together with, in the case of an affiliate controlled by the
19 entity, the number of shares and the percentage of any class
20 of voting stock of that affiliate owned, directly or indirectly,
21 by that entity, and, in the case of an affiliate which controls
22 that entity, the number of shares and the percentage of any
23 class of voting stock of that entity owned, directly or indi-
24 rectly, by the affiliate.

1 (c) Nothing in this title shall be deemed to limit in any
2 way the authority of the Secretary concerned to make grants,
3 issue leases, licenses, or permits, or enter into contracts
4 under other provisions of law, for purposes ancillary or
5 complementary to the construction, operation, maintenance,
6 or termination of any facility authorized under this title, but
7 such action shall not be in substitution for or inconsistent
8 with the provisions of this title.

9 (d) This title shall be administered in a manner to
10 promote competition.

11 COST-SHARE ROAD AUTHORIZATION

12 SEC. 502. (a) The Secretary with respect to the public
13 lands, is authorized to provide for the acquisition, construc-
14 tion, and maintenance of roads within and near the public
15 lands in locations and according to specifications which will
16 permit maximum economy in harvesting timber from such
17 lands tributary to such roads and at the same time meet
18 the requirements for protection, development, and manage-
19 ment of such lands and for utilization of the other resources
20 thereof. Financing of such roads may be accomplished (1)
21 by the Secretary utilizing appropriated funds, (2) by require-
22 ments on purchasers of timber and other products from the
23 public lands, including provisions for amortization of road
24 costs in contracts, (3) by cooperative financing with other

1 public agencies and with private agencies or persons, or (4)
2 by a combination of these methods: *Provided*, That where
3 roads of a higher standard than that needed in the harvest-
4 ing and removal of the timber and other products covered by
5 the particular sale are to be constructed, the purchaser of
6 timber and other products from public lands shall not be
7 required to bear that part of the costs necessary to meet such
8 higher standard, and the Secretary is authorized to make
9 such arrangements to this end as may be appropriate.

10 (b) Copies of all instruments affecting permanent inter-
11 ests in land executed pursuant to this Act shall be recorded
12 in each county where the lands are located.

13 (c) The Secretary may require the user or users of
14 a road, trail, land, or other facility administered by him
15 through the Bureau, including purchasers of Government
16 timber and other products, to maintain such facilities in a
17 satisfactory condition commensurate with the particular use
18 requirements of each. Such maintenance to be borne by
19 each user shall be proportionate to total use. The Secretary
20 may also require the user or users of such a facility to recon-
21 struct the same when such reconstruction is determined to
22 be necessary to accommodate such use. If such maintenance
23 or reconstruction cannot be so provided or if the Secretary
24 determines that maintenance or reconstruction by a user

1 would not be practical, then the Secretary may require
2 that sufficient funds be deposited by the user to provide
3 his portion of such total maintenance or reconstruction.
4 Deposits made to cover the maintenance or reconstruction
5 of roads are hereby made available until expended to cover
6 the cost to the United States of accomplishing the purposes
7 for which deposited: *Provided*, That deposits received for
8 work on adjacent and overlapping areas may be combined
9 when it is the most practicable and efficient manner of
10 performing the work, and cost thereof may be determined
11 by estimates: *And provided further*, That unexpended bal-
12 ances upon accomplishment of the purpose for which de-
13 posited shall be transferred to miscellaneous receipts or
14 refunded.

15 (d) Whenever the agreement under which the United
16 States has obtained for the use of, or in connection with, the
17 public lands a right-of-way or easement for a road or an
18 existing road or the right to use an existing road provides
19 for delayed payments to the Government's grantor, any
20 fees or other collections received by the Secretary for the use
21 of the road may be placed in a fund to be available for
22 making payments to the grantor.

23 RIGHT-OF-WAY CORRIDORS

24 SEC. 503. In order to minimize adverse environmental
25 impacts and the proliferation of separate rights-of-way, the

1 utilization of rights-of-way in common shall be required to
2 the extent practical, and each right-of-way or permit shall
3 reserve to the Secretary concerned the right to grant addi-
4 tional rights-of-way or permits for compatible uses on or
5 adjacent to rights-of-way granted pursuant to this Act.

6 **GENERAL PROVISIONS**

7 **SEC. 504.** (a) The Secretary concerned shall specify
8 the boundaries of each right-of-way as precisely as is prac-
9 ticable. Each right-of-way shall be limited to the ground
10 which the Secretary concerned determines (1) will be
11 occupied by facilities which constitute the project for which
12 the right-of-way is given, (2) to be necessary for the opera-
13 tion or maintenance of the project, (3) to be necessary to
14 protect the public safety, and (4) will do no unnecessary
15 damage to the environment. The Secretary concerned may
16 authorize the temporary use of such additional lands as he
17 determines to be reasonably necessary for the construction,
18 operation, maintenance, or termination of the project or a
19 portion thereof, or for access thereto.

20 (b) Each right-of-way or permit granted or renewed
21 pursuant to this section shall be limited to a reasonable
22 term in light of all circumstances concerning the project. In
23 determining the duration of a right-of-way the Secretary con-
24 cerned shall, among other things, take into consideration the
25 cost of the facility, its useful life, and any public purpose it

1 serves. The Secretary concerned shall renew any right-of-
2 way, in accordance with the provisions of this section, so
3 long as the use for which the right-of-way is required is con-
4 tinuing and is maintained in accordance with all of the provi-
5 sions of this section.

6 (c) Rights-of-way granted, issued, or renewed pursuant
7 to this title shall be given under such regulations or stipula-
8 tions, in accord with the provision of this title or any other
9 applicable law, and subject to such terms and conditions as
10 the Secretary concerned may prescribe regarding extent,
11 duration, survey, location, construction, maintenance, and
12 termination.

13 (b) The Secretary concerned, prior to granting a right-
14 of-way pursuant to this title for a new project which may
15 have a significant impact on the environment, shall require
16 the applicant to submit a plan of construction, operation, and
17 rehabilitation for such right-of-way which shall comply with
18 stipulations or with regulations issued by that Secretary,
19 including the terms and conditions required under section
20 504 of this Act.

21 (e) Mineral and vegetative materials, including timber,
22 within or without a right-of-way, may be used or disposed
23 of in connection with construction or other purposes only if
24 authorization to remove or use such materials has been
25 obtained pursuant to applicable laws.

1 (f) The holder of a right-of-way shall pay annually in
2 advance the fair market value thereof as determined by the
3 Secretary granting or issuing such right-of-way. The Secre-
4 tary concerned may, by regulation or prior to promulgation
5 of such regulations, as a condition of a right-of-way, require
6 an applicant for or holder of a right-of-way to reimburse
7 the United States for all reasonable administrative and other
8 costs incurred in processing an application for such right-of-
9 way and in inspection and monitoring of construction, opera-
10 tion, and termination of the facility pursuant to such right-
11 of-way: *Provided, however,* That such costs need not be reim-
12 bursed in any situation where there is in existence a coopera-
13 tive cost share right-of-way program between the United
14 States and the holder of a right-of-way. Rights-of-way may
15 be granted, issued, or renewed to a Federal, State, or local
16 government or an agency or instrumentality thereof, or to
17 nonprofit associations or nonprofit corporations which are not
18 themselves controlled or owned by profitmaking corporations
19 or business enterprises, for such lesser charge as the Secretary
20 concerned finds equitable and in the public interest. Such
21 rights-of-way issued at less than fair market value are not
22 assignable except with the approval of the Secretary issuing
23 the right-of-way.

24 (g) The Secretary concerned shall promulgate regula-
25 tions specifying the extent to which holders of rights-of-way

1 under this title shall be liable to the United States for damage
2 or injury incurred by the United States in connection with
3 the rights-of-way. The regulations shall also specify the
4 extent to which such holders shall indemnify or hold harm-
5 less the United States for liabilities, damages, or claims aris-
6 ing in connection with the rights-of-way.

7 (h) Where he deems it appropriate, the Secretary con-
8 cerned may require a holder of a right-of-way to furnish a
9 bond, or other security, satisfactory to him to secure all or
10 any of the obligations imposed by the terms and conditions
11 of the right-of-way or by any rule or regulation of the
12 Secretary concerned.

13 (i) The Secretary concerned shall grant, issue, or renew
14 a right-of-way under this title only when he is satisfied that
15 the applicant has the technical and financial capability to
16 construct the project for which the right-of-way is requested,
17 and in accord with the requirements of this title.

18 **TERMS AND CONDITIONS**

19 **SEC. 505.** Each right-of-way shall contain such terms
20 and conditions as the Secretary concerned deems necessary
21 to (a) carry out the purposes of this Act and rules and
22 regulations issued hereunder; (b) protect the environment;
23 (c) assure compliance with applicable air and water quality

1 standards and siting requirements established by or pursuant
2 to law; (d) protect Federal property and economic interests;
3 (e) manage efficiently the lands which are subject to the
4 right-of-way or adjacent thereto and protect the other lawful
5 users of the lands adjacent to or traverse by such right-of-
6 way; (f) protect lives and property; (g) protect the in-
7 terests of individuals living in the general area traversed by
8 the right-of-way who rely on the fish, wildlife, and biotic
9 resources of the area for subsistence purpose; (h) protect the
10 public interest in the lands; and (i) minimize damage to
11 scenic and esthetic values giving consideration to the route
12 for the right-of-way which causes the least damage to the
13 environment.

14 SUSPENSION OR TERMINATION OF RIGHTS-OF-WAY

15 SEC. 506. Abandonment of the right-of-way or noncom-
16 pliance with any provision of this title, condition of the right-
17 of-way, or applicable rule or regulation of the Secretary con-
18 cerned may be grounds for suspension or termination of the
19 right-of-way if, after due notice to the holder of the right-of-
20 way and an appropriate administrative proceeding pursuant
21 to section 554 of title 5 of the United States Code, the Sec-
22 retary concerned determines that any such ground exists and
23 that suspension or termination is justified. No administrative

1 proceeding shall be required where the right-of-way by its
2 terms provides that it terminates on the occurrence of a fixed
3 or agreed-upon condition, event, or time. If the Secretary
4 concerned determines that an immediate temporary suspen-
5 sion of activities within a right-of-way for violation of its
6 terms and conditions is necessary to protect public health or
7 safety or the environment, he may abate such activities prior
8 to an administrative proceeding. Prior to commencing any
9 proceeding to suspend or terminate a right-of-way the Sec-
10 retary concerned shall give written notice to the holder of
11 the grounds for such action and shall give the holder a rea-
12 sonable time to resume use of the right-of-way or to comply
13 with this title, condition, rule, or regulation as the case may
14 be. Failure of the holder of the right-of-way to use the right-
15 of-way for the purpose for which it was granted, issued, or
16 renewed, for any continuous five-year period, shall constitute
17 a rebuttable presumption of abandonment of the right-of-
18 way, except that where the failure of the holder to use the
19 right-of-way for the purpose for which it was granted, issued,
20 or renewed for any continuous five-year period is due to cir-
21 cumstances not within the holder's control, the Secretary con-
22 cerned is not required to commence proceedings to suspend
23 or terminate the right-of-way.

1 RIGHTS-OF-WAY FOR FEDERAL AGENCIES

2 SEC. 507. The Secretary concerned may reserve or
3 grant for the use of any department or agency of the United
4 States a right-of-way over, upon, or through the land ad-
5 ministered by him, subject to such terms and conditions as
6 he may impose. The provisions of this title shall be applicable
7 to any such right-of-way.

8 CONVEYANCE OF LANDS .

9 SEC. 508. If under applicable law the Secretary con-
10 cerned decides to transfer out of Federal ownership any
11 lands covered in whole or in part by a right-of-way, includ-
12 ing a right-of-way granted under the Act of November 16,
13 1973 (87 Stat. 576), the lands may be conveyed subject to
14 the right-of-way; however, if the Secretary concerned de-
15 termines that retention of Federal control over the right-of-
16 way is necessary to assure that the purposes of this title will
17 be carried out, the terms and conditions of the right-of-way
18 complied with, or the lands protected, he shall (a) reserve
19 to the United States that portion of the lands which lies
20 within the boundaries of the right-of-way, or (b) convey
21 the lands, including that portion within the boundaries of
22 the right-of-way, subject to the right-of-way and reserving
23 to the United States the right to enforce all or any of the

1 terms and conditions of the right-of-way, including the right
2 to renew it or extend it upon its termination and to collect
3 rents.

4 **EXISTING RIGHTS-OF-WAY**

5 **SEC. 509.** Nothing in this title shall have the effect
6 of terminating any right-of-way or rights-of-use heretofore
7 issued, granted, or permitted. However, with the consent of
8 the holder thereof, the Secretary concerned may cancel such
9 a right-of-way and in its stead issue a right-of-way pursuant
10 to the provisions of this title.

11 **STATE STANDARDS**

12 **SEC. 510.** The Secretary concerned shall take into con-
13 sideration and, to the extent practicable, comply with State
14 standards for right-of-way construction, operation, and
15 maintenance if those standards are more stringent than
16 Federal standards and if the lands concerned are adjacent
17 to State lands.

18 **EFFECT ON OTHER LAWS**

19 **SEC. 511. (a)** Effective on and after twenty-four com-
20 plete calendar months after the date of enactment of this Act,
21 no right-of-way for the purposes listed in this title shall be
22 granted, issued, or renewed over, upon, or through such lands
23 except under and subject to the provisions, limitations, and

1 conditions of this title: *Provided*, That nothing in this title
2 shall be construed as affecting or modifying the provisions of
3 the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C.
4 532-35) and in the event of conflict with, or inconsistency
5 between, this title and the Act of October 13, 1964, the latter
6 shall prevail. Any pending application for a right-of-way
7 under any other law prior to the effective date of this sec-
8 tion shall be considered as an application under this title.
9 The Secretary concerned may require the applicant to sub-
10 mit any additional information he deems necessary to
11 comply with the requirements of this title.

12 (b) Nothing in this title shall be construed to preclude
13 the use of lands covered by this title for highway purposes
14 pursuant to sections 107 and 317 of title 23 of the United
15 States Code.

16 (c) (1) Nothing in this title shall be construed as ex-
17 empting any holder of a right-of-way issued under this title
18 from any provision of the antitrust laws of the United States.

19 (2) For the purposes of this subsection, the term "anti-
20 trust laws" includes the Act of July 2, 1890; the Act of
21 October 15, 1914; the Federal Trade Commission Act (15
22 U.S.C. 41 et seq.) ; and sections 73 and 74 of the Act of
23 August 27, 1894.

1 TITLE VI—EFFECT ON EXISTING RIGHTS; RE-
 2 PEAL OF PRIOR LAWS; APPROPRIATION
 3 AUTHORIZATION, AND EFFECTIVE DATE

4 EFFECT ON EXISTING RIGHTS

5 SEC. 601. (a) Nothing in this Act, or in any amend-
 6 ment made by this Act, shall be construed as terminating
 7 any valid lease, permit, patent, right-of-way, or other land
 8 use right existing on the date of enactment of this Act.

9 (b) Notwithstanding any provision of this Act, in the
 10 event of conflict with or inconsistency between this Act and
 11 the Act of August 28, 1937 (43 U.S.C. 1181a-1181j) in-
 12sofar as it relates to management of timber resources, and
 13 disposition of revenues from lands and resources, the latter
 14 shall prevail.

15 REPEAL OF LAWS RELATING TO HOMESTEADING, DESERT
 16 ENTRY, AND SMALL TRACTS

17 SEC. 602. (a) Effective on and after ten years from
 18 the date of enactment of this Act, the following statutes
 19 or parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	48 U.S. Code
1. Homesteads:				
Revised Statute 2289.....	561	5	26: 1096	161, 171.
Mar. 3, 1891.....				161, 162.
Revised Statute 2300.....				162.
Revised Statute 2295.....				163.
Revised Statute 2291.....				164.
June 6, 1912.....	153		37: 123	164, 169, 213.
May 14, 1880.....	89		21: 141	166, 185, 202, 223.
June 6, 1900.....	821		31: 633	166, 223.
Aug. 9, 1912.....	280		37: 267	
Apr. 6, 1914.....	51		38: 312	167.
Mar. 1, 1921.....	90		41: 1153	
Oct. 17, 1914.....	325		39: 740	168.
Revised Statute 2297.....				169.
Mar. 31, 1881.....	153		21: 611	
Oct. 22, 1914.....	335		38: 766	170.
Revised Statute 2292.....				171.
June 8, 1880.....	136		21: 166	172.
Revised Statute 2301.....				178.
Mar. 3, 1891.....	561	6	26: 1098	
June 3, 1898.....	312	2	29: 197	
Revised Statute 2288.....				174.
Mar. 3, 1891.....	561	3	26: 1097	
Mar. 3, 1903.....	1424		36: 991	
Revised Statute 2296.....				175.
Apr. 28, 1922.....	155		42: 502	
May 17, 1900.....	479	1	31: 179	179.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Jan. 26, 1901.....	180		31, 740.....	180.
Sept. 5, 1914.....	294		38, 712.....	182.
Revised Statute 2300.....				183.
Aug. 31, 1918.....	169	8	40, 957.....	
Sept. 13, 1918.....	173		40, 960.....	
Revised Statute 2302.....				184, 201.
July 26, 1892.....	251		27, 270.....	185.
Feb. 14, 1920.....	191		41, 134.....	186.
Jan. 21, 1922.....	32		42, 358.....	
Dec. 28, 1922.....	19		42, 1067.....	
June 12, 1930.....	471		46, 580.....	
Feb. 25, 1925.....	336		48, 981.....	187.
June 21, 1934.....	600		48, 1185.....	187a.
May 22, 1902.....	821	2	32, 293.....	187b.
June 5, 1900.....	716		31, 270.....	188, 217.
Mar. 3, 1875.....	131	15	18, 430.....	189.
July 4, 1884.....	190	Only last paragraph of sec. 1.	23, 96.....	190.
Mar. 1, 1933.....	160	1	47, 418.....	190a.
The following words only: "Provided, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C. title 48, sec. 190)."				
Revised Statutes 2310, 2311.....				191.
June 13, 1902.....	1080		32, 384.....	233.
Mar. 3, 1879.....	191		20, 472.....	204.
July 1, 1879.....	20		21, 46.....	205.
May 6, 1896.....	88		24, 22.....	206.
Aug. 21, 1916.....	361		39, 518.....	207.
June 3, 1924.....	240		43, 357.....	208.
Revised Statute 2298.....				211.
Aug. 30, 1890.....	837		26, 391.....	212.
The following words only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act."				
Mar. 3, 1891.....	661	17	26, 1101.....	
The following words only "and that the provision of 'An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes,' which reads as follows, viz: 'No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws,' shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws."				
Apr. 28, 1904.....	1776		33, 527.....	213.
Aug. 3, 1900.....	821		61, 398.....	214.
Mar. 2, 1899.....	381	6	25, 824.....	215.
Feb. 20, 1917.....	28		39, 928.....	216.
Mar. 4, 1921.....	162	1	41, 1433.....	218.
Feb. 19, 1909.....	160		35, 639.....	218.
June 13, 1912.....	166		37, 132.....	
Mar. 3, 1915.....	94		38, 653.....	
Mar. 3, 1915.....	91		38, 957.....	
Mar. 4, 1915.....	150	2	38, 1163.....	
July 3, 1916.....	220		39, 344.....	
Feb. 11, 1913.....	39		37, 969.....	218, 219.
June 17, 1910.....	298		36, 531.....	219.
Mar. 3, 1915.....	91		38, 957.....	
Sept. 5, 1916.....	440		39, 724.....	
Aug. 10, 1917.....	82	10	40, 275.....	
Mar. 4, 1915.....	150	1	38, 1162.....	220.
Mar. 4, 1923.....	245	1	42, 1445.....	222.
Apr. 23, 1904.....	1801		33, 617.....	224.
Mar. 2, 1907.....	2527		34, 1234.....	
May 29, 1908.....	220	7	35, 698.....	
Aug. 24, 1912.....	371		37, 499.....	
Aug. 22, 1914.....	270		38, 704.....	231.
Feb. 25, 1919.....	21		40, 1153.....	
July 3, 1916.....	214		39, 341.....	232.
Sept. 29, 1919.....	64		41, 289.....	233.
Apr. 6, 1922.....	122		42, 191.....	233, 272, 273.
Mar. 2, 1889.....	661	3	25, 854.....	234.
Dec. 29, 1884.....	14		28, 599.....	
July 1, 1879.....	63	1	40, 130.....	235.
Dec. 30, 1917.....	6		40, 130.....	236.
July 24, 1919.....	26	Next to last paragraph only.	41, 271.....	237.
10. Mar. 2, 1932.....	60		47, 59.....	237a.
May 21, 1934.....	329		48, 787.....	237b.
May 22, 1935.....	135		49, 295.....	237c.
Aug. 19, 1935.....	560		49, 659.....	237d.
Mar. 31, 1938.....	57		52, 149.....	237e.
Apr. 20, 1939.....	229		49, 1335.....	237f, g, h.
July 30, 1956.....	778	1, 2, 4	70, 715.....	237 f, g, h.
Mar. 1, 1921.....	102		41, 1202.....	238.
Apr. 7, 1922.....	125		42, 492.....	239.
Revised Statute 2308.....				240.
June 16, 1898.....	478		39, 473.....	240.
Aug. 29, 1916.....	430		39, 671.....	241.
Apr. 7, 1930.....	103		46, 144.....	242.
Mar. 3, 1930.....	196		47, 1454.....	243a.
Mar. 3, 1879.....	192		40, 472.....	251.
Mar. 2, 1889.....	381	7	25, 855.....	252.

Act of	Chapter	Section	Statute at Large	48 U.S. Code
June 3, 1878.....	152.....		20: 91.....	253.
Revised Statute 2294.....				254.
May 26, 1890.....	355.....		26: 121.....	
Mar. 11, 1902.....	182.....		32: 63.....	
Mar. 4, 1904.....	304.....		33: 59.....	
Feb. 23, 1923.....	105.....		42: 1281.....	
Revised Statute 2293.....				255.
Oct. 6, 1917.....	86.....		40: 391.....	
Mar. 4, 1913.....	149.....	Only last paragraph of section headed "Public Land Service,"	37: 925.....	256.
May 13, 1932.....	178.....		47: 153.....	256a.
June 16, 1933.....	99.....		48: 274.....	
July 26, 1935.....	419.....		49: 504.....	
June 16, 1937.....	301.....		50: 303.....	
Aug. 27, 1935.....	249.....		49: 909.....	256b.
Sept. 30, 1890.....	J. Res. 60.....		26: 684.....	261.
June 16, 1880.....	244.....		21: 287.....	263.
Apr. 18, 1904.....	25.....		33: 589.....	
Revised Statute 2304.....				271.
Mar. 1, 1901.....	674.....		31: 847.....	271, 272.
Revised Statute 2305.....				272.
Feb. 25, 1919.....	37.....		40: 1161.....	272a.
Dec. 28, 1922.....	19.....		42: 1067.....	
Revised Statute 2306.....				274.
Mar. 3, 1893.....	203.....		27: 503.....	275.
Aug. 18, 1804.....	301.....	Only last paragraph of section headed "Surveying the Public Lands."	28: 397.....	276.
Revised Statute 2309.....				277.
Revised Statute 2307.....				278.
Sept. 21, 1922.....	357.....		42: 900.....	
Sept. 27, 1944.....	421.....		58: 747.....	279-283.
June 25, 1946.....	474.....		60: 300.....	279.
May 31, 1947.....	83.....		61: 123.....	279, 280, 282.
June 18, 1951.....	306.....		63: 253.....	279, 282.
June 3, 1948.....	399.....		62: 305.....	283, 284.
Dec. 29, 1916.....	0.....	1-8.....	39: 862.....	291-298.
Feb. 28, 1931.....	328.....		46: 1454.....	291.
June 9, 1933.....	53.....		48: 119.....	292.
June 6, 1924.....	274.....		46: 469.....	292.
Oct. 25, 1918.....	195.....		40: 1016.....	293.
Sept. 29, 1919.....	63.....		41: 287.....	294, 295.
Mar. 4, 1923.....	245.....	2.....	42: 1445.....	302.
Aug. 21, 1916.....	361.....		59: 518.....	1075.
Aug. 28, 1937.....	876.....	3.....	50: 875.....	1181c.
2. Desert Land Entries:				
Mar. 28, 1908.....	2.....	33: 52, ch. 112.....		324.
Mar. 28, 1908.....	1.....	33: 52, ch. 112.....		326.
Feb. 27, 1917.....		39: 946, ch. 134.....		330.
Dec. 15, 1921.....		42: 348, ch. 3.....		331.
Aug. 7, 1917.....		40: 250.....		332.
Mar. 28, 1908.....		35: 52, ch. 112.....		333.
Apr. 30, 1912.....		37: 106, ch. 101.....		334.
Mar. 4, 1915.....	5.....	38: 1161, ch. 147.....		335.
Feb. 25, 1925.....		43: 982, ch. 329.....		336.
July 30, 1956.....		70: 716, ch. 778.....		336a-d.
Mar. 4, 1915.....	5.....	38: 116, ch. 147.....		337, 338.
Mar. 4, 1929.....		45: 1518, ch. 687.....		339.
3. Small Tracts:				
June 1, 1938.....	317.....	52: 609.....		682a-e.

1 (b) Subject to the provisions of the Act of August 31,
2 1964 (78 Stat. 751), but notwithstanding any other pro-
3 vision of law, applications for entry under the Acts specified
4 in subsection (a) may be made only during the five-year
5 period beginning on the date of enactment of this Act which
6 applications the Secretary shall allow or reject within two
7 years of receipt, and patents may be issued for such applica-

tions only during the ten-year period following such date of enactment. Notwithstanding any provision of law relating to desert land entries specified in subsection (a), land for which application was made after the date of enactment of this Act shall be transferred to the applicant, otherwise eligible to receive such land, only upon payment of the fair market value of the unimproved land in his entry.

REPEAL OF LAWS RELATED TO DISPOSAL

SEC. 603. (a) Effective on and after 24 complete calendar months after the date of enactment of this Act, the following statutes or parts of statutes are hereby repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Sale and Disposal Laws:				
Mar. 8, 1891.....	561.....	9.....	26: 1099.....	671.
Revised Statute 2354.....				673.
Revised Statute 2355.....				674.
May 13, 1893.....	344.....	2.....	30: 418.....	675.
Revised Statute 2365.....				676.
Revised Statute 2357.....				678.
June 15, 1880.....	227.....	3, 4.....	21: 238.....	679, 680.
Mar. 2, 1889.....	381.....	4.....	25: 854.....	681.
Mar. 1, 1907.....	2286.....		34: 1052.....	682.
July 14, 1946.....	203.....		59: 467.....	
June 8, 1954.....	270.....		68: 269.....	
Revised Statute 2361.....				688.
Revised Statute 2362.....				689.
Revised Statute 2363.....				690.
Revised Statute 2366.....				691.
Revised Statute 2366.....				692.
Revised Statute 2369.....				693.
Revised Statute 2370.....				694.
Revised Statute 2371.....				695.
Revised Statute 2374.....				696.
Revised Statute 2372.....				697.
Feb. 24, 1909.....	181.....		35: 645.....	
May 21, 1926.....	353.....	The 2 provisions only.	44: 501.....	
Revised Statute 2375.....				698.
Revised Statute 2376.....				699.
Mar. 2, 1889.....	381.....	1.....	25: 854.....	700.
2. Townsite Reservation and Sale:				
Revised Statute 2380.....				711.
Revised Statute 2381.....				712.
Revised Statute 2382.....				713.
Aug. 24, 1954.....	904.....		68: 792.....	
Revised Statute 2383.....				714.
Revised Statute 2384.....				715.
Revised Statute 2386.....				717.
Revised Statute 2387.....				718.
Revised Statute 2388.....				719.
Revised Statute 2389.....				720.
Revised Statute 2391.....				721.
Revised Statute 2392.....				722.
Revised Statute 2393.....				723.
Revised Statute 2394.....				724.
Mar. 3, 1877.....	113.....	1, 3, 4.....	19: 392.....	725-727.
Mar. 3, 1891.....	561.....	16.....	26: 1101.....	728.
July 9, 1914.....	133.....		38: 454.....	729.
Feb. 9, 1903.....	531.....		32: 820.....	731.
3. Drainage Under State Laws:				
May 20, 1903.....	181.....	1-7.....	35: 171.....	1021-1027.
May 1, 1938.....	P. L. 86-387.....			1029-1034.
Jan. 17, 1920.....	47.....		41: 592.....	1041-1043.
4. Abandoned Military Reservation:				
July 6, 1884.....	214.....	5.....	23: 104.....	1074.
Aug. 21, 1916.....	361.....		39: 518.....	1075.
Mar. 6, 1869.....	26.....		27: 508.....	1076.

The following words only: "Provided, That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place."

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Aug. 23, 1894.....	314		28: 491	1077, 1078.
Feb. 11, 1903.....	543		32: 82	1079.
Feb. 16, 1895.....	92		23: 664	1080, 1077.
Apr. 23, 1904.....	1496		33: 306	1081.
5. Public Lands; Oklahoma:				
May 2, 1890.....	182	Last para- graph of sec. 18 and secs. 20, 21, 22, 24, 27.	26: 90	1091-1094, 1096, 1097.
Mar. 3, 1891.....	543	16.	26: 1026	1098.
Aug. 7, 1946.....	772	1, 2.	60: 872	1110-1101.
Aug. 3, 1905.....	498	1-3.	69: 445	1102-1102g.
May 14, 1890.....	207		26: 109	1111-1117.
Sept. 1, 1893.....	J. Res. 4		26: 11	1118.
May 11, 1896.....	169	1, 2.	29: 116	1119.
Jan. 18, 1897.....	62	1-3, 5, 7.	29: 490	1131-1134.
June 23, 1897.....	8		30: 105	
Mar. 1, 1899.....	323		30: 996	
6. Sales of Isolated Tracts:				
Revised Statute 2455				1171.
Feb. 26, 1897.....	133		23: 637	
June 27, 1906.....	3354		34: 617	
Mar. 28, 1912.....	67		37: 77	
Mar. 9, 1923.....	164		45: 253	
June 28, 1924.....	865	14.	48: 1274	
July 25, 1947.....	398		61: 680	
Apr. 24, 1948.....	428		45: 457	1171a.
May 24, 1949.....	343		46: 377	1171b.
Feb. 4, 1948.....	18		40: 1056	1172.
May 10, 1920.....	178		41: 505	1173.
Aug. 11, 1921.....	62		42: 159	1175.
May 19, 1926.....	337		44: 586	1176.
Feb. 14, 1931.....	170		46: 1105	1177.
7. Alaska Special Laws:				
Mar. 3, 1891.....	561	11.	26: 1009	732.
May 25, 1926.....	379		44: 629	732-738.
May 29, 1963.....	P. L. 88-34		77: 52	
July 24, 1947.....	305		61: 414	738.
May 14, 1898.....	299	1	30: 409	270.
Mar. 3, 1903.....	1002		32: 1029	
Apr. 29, 1950.....	187	1	64: 94	
Aug. 3, 1955.....	496		69: 444	270, 687a-2.
Apr. 29, 1950.....	137	2-5	64: 95	270, 270-5, 270-6.
July 11, 1956.....	571	2	70: 529	270-7, 687a-1.
July 8, 1916.....	228		39: 332	270-8, 270-9.
June 28, 1918.....	110		40: 632	270-10, 270-13, 270-14.
July 11, 1956.....	571	1	70: 528	
Mar. 8, 1922.....	96	1	42: 415	270-11.
Aug. 23, 1958.....	P. L. 85-725	1, 4.	72: 736	
Aug. 17, 1961.....	P. L. 87-147		75: 394	270-13.
Oct. 3, 1962.....	P. L. 87-742		76: 740	
Apr. 13, 1926.....	121		44: 243	270-15.
Apr. 29, 1950.....	134	3.	61: 93	270-16, 270-17.
May 14, 1893.....	299	10.	30: 413	270-4, 687 to 687a-5
Mar. 3, 1927.....	323		44: 1364	
May 26, 1934.....	357		48: 809	
Aug. 23, 1958.....	P. L. 85-725	3	72: 730	
Mar. 3, 1891.....	561	13	26: 1100	687a-6.
Aug. 30, 1949.....	521	1, 2, 4, 5.	63: 679	687b, 687b-1.
July 19, 1963.....	P. L. 88-66		77: 80	687b-3, 687b-4 687b-5.
8. Pittman Underground Water Act:				
Sept. 22, 1922.....	400		42: 1012	356.

(b) Effective on and after ten years from the date of enactment of this Act, section 7 of the Taylor Grazing Act (43 U.S.C. 315f) is amended to read as follows:

“SEC. 7. The Secretary of the Interior is authorized, in his discretion, to examine and classify any lands withdrawn or reserved by Executive order of November 26, 1934 (numbered 6910), and amendments thereto, and Executive order

1 of February 5, 1935 (numbered 6964), or within a grazing
2 district, which are more valuable or suitable for any other
3 use than for the use provided for under this Act, or proper
4 for acquisition in satisfaction of any outstanding in lieu
5 selection, exchange, or land grant, and to open such lands
6 to disposal in accordance with such classification under ap-
7 plicable public land laws. Such lands shall not be subject to
8 disposition until after the same have been classified and
9 opened to disposal.”.

10 (c) Effective on and after ten years from the date of en-
11 actment of this Act, the first section of the Act of March 3,
12 1877 (43 U.S.C. 321), is amended to read as follows: “That
13 all surplus water over and above such actual appropriation
14 and use, together with the water of all lakes, rivers, and
15 other sources of water supply upon the public lands and not
16 navigable, shall remain and be held free for the appropriation
17 and use of the public for irrigation, mining, and manufactur-
18 ing purposes subject to existing rights.”.

19 (d) Effective on and after ten years from the date of
20 enactment of this Act, section 2 of the Act of March 8, 1922,
21 42 Stat. 416, ch. 96, as amended by Section 2, of the Act
22 of August 23, 1958, 72 Stat. 730, Public Law 85-725 (43
23 U.S.C. 270-12) is further amended to read as follows:

24 “SEC. 2. The coal, oil, or gas deposits reserved to the

1 United States in accordance with this Act, shall be subject to
2 disposal by the United States in accordance with the provi-
3 sions of the laws applicable to coal, oil, or gas deposits or coal,
4 oil, or gas lands in Alaska in force at the time of such disposal.
5 Any person qualified to acquire coal, oil, or gas deposits, or
6 the right to mine or remove the coal or to drill for and remove
7 the oil or gas under the laws of the United States shall have
8 the right at all times to enter upon the lands patented under
9 this Act, and in accordance with the provisions hereof, for the
10 purpose of prospecting for coal, oil, or gas therein, upon the
11 approval by the Secretary of the Interior of a bond or under-
12 taking to be filed with him as security for the payment of all
13 damages to the crops and improvements on such lands by
14 reason of such prospecting. Any person who has acquired
15 from the United States the coal, oil, or gas deposits in any
16 such land, or the right to mine, drill for, or remove the same,
17 may reenter and occupy so much of the surface thereof inci-
18 dent to the mining and removal of the coal, oil, or gas there-
19 from, and mine and remove the coal or drill for and remove
20 oil and gas upon payment of the damages caused thereby to
21 the owner thereof, or upon giving a good and sufficient bond
22 or undertaking in an action instituted in any competent court
23 to ascertain and fix said damages: *Provided*, That the owner
24 under such limited patent shall have the right to mine the

1 coal for use on the land for domestic purposes at any time
2 prior to the disposal by the United States of the coal deposits:
3 *Provided further*, That nothing in this Act shall be con-
4 strued as authorizing the exploration upon or entry of any
5 coal deposits withdrawn from such exploration and pur-
6 chase.”.

7 (e) Section 3 of the Act of August 30, 1949 (43 U.S.C.
8 687b-2), is amended to read as follows:

9 “SEC. 3. Notwithstanding the provisions of any Act of
10 Congress to the contrary, any person who prospects for,
11 mines, or removes any minerals from any land disposed of
12 under this Act, shall be liable for any damage that may
13 be caused to the value of the land and tangible improve-
14 ments thereon by such prospecting for, mining, or removal
15 of minerals. Nothing in this section shall be construed to
16 impair any vested right in existence on August 30, 1949.”.

17 **REPEAL OF LAW RELATING TO ADMINISTRATION OF**

18 **PUBLIC LANDS**

19 SEC. 604. (a) Subject to the condition that the Secre-
20 tary may on and after the date of enactment of this Act
21 exercise discretionary authority granted by this Act in lieu of
22 the discretionary authority granted by the following statutes
23 or parts of statutes, effective on and after twenty-four com-

- 1 plete calendar months after the date of enactment of this Act,
 2 the following statutes or parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Mar. 2, 1895.....	174.....		28:744.....	176.
2. June 28, 1934.....	895.....	8.....	48:1272.....	315g.
June 26, 1934.....	842.....	3.....	49:1978, title I.....	
June 19, 1948.....	548.....	4.....	62:533.....	
July 9, 1962.....	P.L. 87-724.....		76:140.....	3152-1.
3. Aug. 24, 1937.....	744.....		59:748.....	315p.
4. Mar. 3, 1909.....	271.....	2d proviso only.....	35:845.....	772.
June 25, 1910.....	J. Res. 40.....		36:894.....	
5. June 21, 1934.....	689.....		48:1185.....	871a.
6. Revised Statute.....	2447.....			1151.
Revised Statute.....	2448.....			1152.
7. June 6, 1874.....	273.....		18:62.....	1153, 1154.
8. Jan. 28, 1879.....	30.....		20:274.....	1155.
9. May 30, 1894.....	87.....		28:84.....	1156.
10. Revised Statute.....	2450.....			1161.
Feb. 27, 1877.....	69.....	1.....	19:244.....	
The following words only: "Section twenty-four hundred and fifty is amended by striking out in the fourth line the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior'";				
Revised Statute.....	2451.....			1162.
February 27, 1877.....	69.....	1.....	19:244.....	
The following words only: "Section twenty-four hundred and fifty-one is amended by striking out, in the first and second lines, the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior'";				
Revised Statute.....	2458.....			1163.
Sept. 20, 1922.....	350.....		42:857.....	
The words: "... and sections 2450, 2451, and 2456 be amended to read as follows:" and all words following in the Act.				
Revised Statute.....	2457.....			1164.
11. Mar. 3, 1891.....	561.....	7.....	23:1093.....	1165.
12. Revised Statute.....	2471.....			1191.
Revised Statute.....	2472.....			1192.
Revised Statute.....	2473.....			1193.
13. July 14, 1960.....	P.L. 86-649.....	101-202(a), 203-204(a), 301-303.....	74:506.....	1361, 1362, 1363-1363.
14. Sept. 26, 1970.....	P.L. 91-429.....		84:865.....	1362a.
15. July 31, 1959.....	401.....	1,2.....	63:1144.....	

- 3 (b) Except with respect to the authority to withdraw
 4 public lands specified in sections 11 (a) (3) and 14 (h) of
 5 the Alaska Native Claims Settlement Act and in the Antiquities Act of June 8, 1906 (16 U.S.C. 431-433), on and
 6 after the date of enactment of this Act, all authority to with-
 7 draw or reserve public lands, whether granted by statute,
 8 acquiescence, or implication, is repealed and all withdrawals
 9 shall be made only under the provisions of this Act.
 10

11 REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY

- 12 SEC. 605. (a) Effective on and after 24 complete calen-
 13 dar months after the date of enactment of this Act, the

- 1 following statutes or parts of statutes are repealed inso-
 2 far as they apply to the public lands:

Act of	Chapter	Section	Statute at Large	48 U.S. Code
Revised Statutes 2309.....				691.
The following words only: "and the right-of-way for the construction of ditches and canals for the purpose herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage."				
Revised Statutes 2340.....				661.
The following words only: ", or rights to ditches and reservoirs used in connection with such water rights,"				
Feb. 26, 1897.....	335.		29: 509.	661.
Mar. 3, 1899.....	427.	1.	30: 1233.	685, 948 (16 U.S.C. 525).
The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plots of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."				
Mar. 3, 1875.....	152.		18: 482.	934-939.
May 14, 1898.....	259.	2-9.	30: 400.	942: 1 to 942: 9.
Feb. 27, 1901.....	614.		31: 815.	943.
June 28, 1906.....	3548.		34: 981.	944.
Mar. 3, 1891.....	561.	18-21.	28: 1161.	946-949.
Mar. 4, 1917.....	184.	1.	30: 1197.	
May 28, 1926.....	409.		44: 668.	
Mar. 1, 1921.....	93.		41: 1194.	950.
Jan. 12, 1897.....	11.		20: 484.	952-955.
Mar. 3, 1923.....	219.		42: 1437.	
Jan. 21, 1895.....	37.	28: 635.		951, 956, 957.
May 14, 1856.....	179.		29: 120.	
May 11, 1898.....	202.		30: 404.	
Mar. 4, 1917.....	184.	2.	30: 1197.	
Feb. 15, 1901.....	372.		31: 790.	959 (16 U.S.C. 79, 522).
Mar. 4, 1911.....	238.		36: 1253.	961 (16 U.S.C. 5, 420, 523).
Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service."				
May 27, 1952.....	338.		60: 95.	
May 21, 1896.....	212.		29: 127.	962-965.
Apr. 12, 1910.....	155.		36: 290.	966-970.

- 3 (b) Notwithstanding the provisions of subsection (a) of
 4 this section, effective on and after twenty-four complete
 5 calendar months after the date of enactment of this Act, the
 6 following statute is repealed in its entirety:

Act of	Chapter	Section	Statute at Large	U.S. Code
Revised Statute 2477.....				43 U.S.C. 982.

AUTHORIZATION

- 8 SEC. 606. (a) Effective October 1, 1977, unless other-
 9 wise specified in this Act, all express or implied appro-
 10 priation authorizations for administration of the public lands

1 that contain no dollar limitations are repealed, and appro-
2 priations to administer the public lands shall not exceed the
3 amounts specified in appropriation authorization Acts here-
4 after enacted or in presently existing Acts that authorize the
5 appropriation of specified amounts. No money shall be
6 appropriated for the administration of the public lands except
7 as may be subsequently authorized by Acts enacted after the
8 date of enactment of this Act.

9 (b) The Secretary shall submit to the Congress recom-
10 mendations for legislation that will provide by statute the
11 policies, scope, limitations, and guidelines for such adminis-
12 tration in order that policies heretofore adopted by adminis-
13 trative action may have a proper legislative base.

14

SEVERABILITY

15

16 SEC. 607. If any provision of this Act or the application
17 thereof is held invalid, the remainder of the Act and the
application thereof shall not be affected thereby.



Mr. MELCHER. That is probably a more comprehensive view of the subcommittee bill from last year, but it may not reflect in many sections of the bill the subcommittee's present view. So, until we have established just what the subcommittee is interested in, I will work from it and from the administration bill. Subsequently, I am sure, the subcommittee will consider introducing a clean bill more accurately reflecting the views as of this Congress.

This morning, our first witness is Jack Horton, the Assistant Secretary of Land and Water Resources. We will receive from the Interior Department and from the Forest Service today, their general views on the legislation. We heard from both last Friday concerning their views on grazing. Now, we will get their general views.

Jack, we are pleased to have you back with us. I see you are accompanied by George Turcott.

Mr. HORTON. I have a full range of professionals from the Department who are going to be responsive and supportive of the actions of the subcommittee.

Mr. MELCHER. That is very helpful for you to bring up people from the Department.

Mr. HORTON. I might identify some of these for the record in case some members of the committee or staff would care to contact them. We have Ray Taylor of the Legislative Counsel's Office who is closely concerned with legislation; Jack McHale is Assistant Solicitor for Lands; Eleanor Schwartz, of course, has an extensive background in this legislation and she is Chief of the Division of Legislation and Regulations in the Bureau of Land Management; George Lee is a Deputy Assistant at the Bureau of Land Management and Merle Storm is Chief of the Division of Forests. These, of course, are in addition to George Turcott, Associate Director.

STATEMENT OF JACK G. HORTON, ASSISTANT SECRETARY, LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR

Mr. HORTON. I am privileged to appear before you today to discuss the provisions of the Policy and Management Act, Subcommittee Print No. 1 in relation to the provisions of the administration's proposed National Resource Lands Management Act introduced as H.R. 5224. We share with you the desire for enactment of comprehensive management authority and tools so urgently needed for administration of the national resource lands. The national resource lands and their resource values are among the Nation's greatest assets. They encompass mountains, rangelands, forests, and lakes and provide some of the most spectacular scenery on Earth. They are a source of food, timber, minerals, and water and offer almost unlimited recreational values.

The national resource lands were for many years used as a means of stimulating the growth and development of the West. Consequently, little attention was given to preserving the irreplaceable values of those lands. Many of the laws pertaining to the lands were designed primarily to facilitate disposal. Although there has been a growing awareness that these lands are an invaluable national asset and that their values must be protected, preserved, and maintained

in Federal ownership, these lands have inherited an archaic and often conflicting conglomeration of laws governing their use. The national resource lands comprise over 60 percent of all Federal lands. Yet Congress has never given the Bureau of Land Management, the administering agency, a clear and comprehensive grant of authority to manage the lands as it has done for the National Forest Service, the National Park Service, and other land managing agencies.

Both subcommittee print No. 1 and the administration's bill address the need for a mission statement and comprehensive management authority. However, Subcommittee Print No. 1 contains a number of provisions which we view as unnecessarily inflexible with respect to the details of the Secretary's administration of the lands and which could result, in our opinion, in needless delay. We believe that these provisions, which I will discuss in more detail shortly, would also impose an unmanageable paperwork burden on both the Congress and the Bureau of Land Management. For these and other reasons I will point out, we do not favor enactment of the provisions of Subcommittee Print No. 1 and strongly recommend that H.R. 5224, the administration proposal, be enacted in lieu thereof.

Title I of the administration bill declares a national policy that these lands be managed under the principles of multiple use and sustained yield in a manner which will protect the quality of environment, including requiring appropriate land reclamation as a condition for use. In addition, title I directs the Secretary of the Interior to inventory the national resource lands and to develop comprehensive land use plans giving priority to areas of critical environmental concern. "Areas of critical environmental concern" include, among others, important natural systems and scenic or historic areas. The bill also directs the Secretary to identify land suitable for wilderness study, and to review and make recommendations to the President so that he may ask Congress for inclusion of eligible land within the wilderness system.

The wilderness review provisions in our bill would be applicable to tracts of 50,000 roadless acres rather than tracts of 5,000 acres. We will also consider for wilderness protection lesser acres, but the use of 50,000 acres will make the job of reviewing 450 million acres of BLM lands more manageable and in addition, less costly. While the provisions of Subcommittee Print No. 1 would in some respects provide similar management authorities and objectives, it contains some provisions which are applicable to lands administered by the Forest Service. We urge that a bill be enacted that avoids the confusion of trying to relate the national resource lands to the National Forest System that is designed specifically to establish a central law for the management of lands administered by the Bureau of Land Management. Of equal importance, we urge that a bill be enacted which will provide the Secretary of the Interior with the flexibility and tools needed for administering the lands for a number of different, perhaps potentially conflicting uses. Apart from the burden which it would create for the Congress and the Bureau, we are seriously concerned that provisions of Subcommittee Print No. 1 requiring notice to the Congress of any management decision which would exclude one or more major uses from a tract of land of more

than 50,000 acres for 2 years or more, would unnecessarily curtail that flexibility. The same arguments can be made with respect to the provisions of Subcommittee Print No. 1 on withdrawals. Mining claims on public lands can be established easily, quickly and with no advance notice to the United States. They often have a very lasting effect. Under the provisions of the Subcommittee Print No. 1 the method for assuring the most appropriate use of fragile areas would be cumbersome at a time when efficiency is crucial. We believe that the withdrawal procedures in Subcommittee Print No. 1 are unnecessary as well as administratively difficult to implement. In addition, there is no specific authority to withdraw areas of less than 5,000 acres for resource uses. Under its provisions, the public would be given notice and there would be an opportunity for participation prior to withdrawal. The administration bill would provide ample opportunity for public participation but would not affect the authorities under which withdrawals are made.

Title II of our bill would provide authority for the Secretary to sell by competitive bidding national resource lands at not less than fair market value, when management of those lands would be significantly improved thereby or when disposal would serve important public objectives which cannot be achieved prudently on land other than the national resource lands. It would authorize conveyance of mineral interests in land to the surface owner if certain criteria are met. Acquisition of lands needed for proper management of national resource lands would also be authorized. The comparable sections of Subcommittee Print No. 1 also contain specific provisions on disposal for the benefit of State and local governments and adjoining landowners.

It is the Department's position that State and local governments and adjacent landowners should not be given a preference to land and that, as a general rule, competitive bidding should be required except in the unusual situation where a direct sale is necessary to recognize equitable considerations or public policies. Our bill would recognize instances when it is appropriate to give a preference to adjacent landowners or users of the land based on facts of a particular case. Similarly, the exception would authorize the Secretary to make a first offer to State and local governments when appropriate. In any event State and local governments already have an opportunity to acquire land under the Recreation and Public Purposes Act.

With respect to conveyance of mineral interests, the provisions of Subcommittee Print No. 1 impose a reverter if the surface owner initiates mineral development. Our bill contains no reverter provisions. To date most conveyances of mineral interests have been made because Federal ownership of the mineral estates has prevented surface owners from obtaining financing for surface development. If the United States imposes a reverter, the surface owner may still not have clear title and financing may be difficult to obtain.

Futhermore, should the minerals conveyed become scarce and valuable at a later date it would be in the national interest to allow the question of whether the minerals should be developed to be controlled by market demands, local zoning, and land use plans. This is the present policy reflected in private legislation to convey minerals reserved to the United States.

Title III of the administration's bill would provide modern land management tools and procedures designed to facilitate achievement of the goals and objectives established for the national resource lands. Among other things, it would establish a working capital fund that would afford a more efficient method of accounting for various programs and service operations of the Bureau of Land Management.

It would significantly facilitate management of the national resource lands by making violation of laws and regulations pertaining to them a crime and vesting enforcement authority in certain designated departmental employees. In addition, the Secretary would be authorized to cooperate with the State and local law enforcement agencies on national resource lands and to reimburse them for extraordinary services on these lands.

In addition, the administration's proposal would require recordation of mining claims with the Secretary and application for a patent, both within specified time periods. Failure to comply would render the claim invalid. Specific authority to issue environmental regulations pertaining to prospecting and mining is also included in title III. We believe procedures outlined in our bill for recordation of a claim directly with the Secretary, along with authority of the Secretary to specify procedures for recordation will provide flexibility needed to develop a simpler streamlined records system. We prefer this to the detailed approach of the recordation provisions in subcommittee print No. 1.

Title IV of the administration's bill is similar to title V of the subcommittee print. It provides uniform and comprehensive authority for the Secretary to grant right-of-way for purposes ranging from roads, trails, and canals to powerlines and pipelines other than oil and gas pipelines.

Presently this authority is derived from numerous, often overlapping laws. These laws would be repealed by title V of our bill insofar as national resource lands are concerned. Enactment of uniform, up-to-date provisions would greatly facilitate the processing of applications as well as the administration of rights-of-way.

The provisions of the subcommittee print concerning right-of-way would be generally applicable to the National Forest System as well as to the national resource lands. With respect to Forests, administration would be the responsibility of the Secretary of Agriculture.

We defer to the Department of Agriculture as to the need for new right-of-way authority for the national forest system. In any event, it would be preferable that that question be taken up in separate legislation rather than in BLM organic legislation.

Additionally, the subcommittee print contains a special right-of-way provision relating to construction and maintenance of roads needed for harvesting timber. It authorizes the Secretary to finance such roads in a variety of ways. Although we understand that the Forest Service already has similar authority, we see no need to include special provisions for timber roads or for roads in general. Under our present practices we require a road of multiple-use serviceability. Section 502 of the committee print would require roads suitable for a particular sale and might result in a proliferation of

roads of little true value in an overall multiple-use management concept.

Title V of our bill would clarify the relationship between our bill and other laws and would repeal a number of obsolete, duplicative or superseded laws. These include a hodgepodge of land disposal laws and a number of other laws relating to fees, charges, and other administrative matters.

Title VI of the provisions of Subcommittee Print No. I would also repeal a number of outmoded laws. However it would postpone the effective date of the repealers for varying time periods.

We recommend immediate repeal of all the laws listed. Immediate repeal would not affect present disposals of lands nor would it disrupt other management programs since section 4 of our bill and a comparable section of the subcommittee print, section 310, provide that prior to promulgation of new rules and regulations, the lands shall continue to be administered under present rules and regulations for a short time.

Moreover, legislation announcing that the homestead laws or desert land laws will be repealed at some time in the future would almost certainly prompt a flood of applications just before the laws expired. The inadequacy of the present disposal laws is one of the principal reasons for our submission of a proposal. We see no reason to postpone the effective date for an arbitrary time period.

Additionally, we do not believe it wise to repeal all withdrawal authority as section 604(b) of Subcommittee Print No. 1 would attempt to do. Withdrawal authority is one of the Secretary's most important management tools. In our judgement, congressional oversight can prevent its abuse.

Subcommittee Print No. 1 contains provisions on several matters which H.R. 5224 does not specifically include:

First with respect to desert lands the subcommittee print would create a California Desert Conservation Area; it would amend the Recreation and Public Purposes Act; and it would order a study of desert areas.

As we have explained in previous appearances before this committee, establishment of a California Desert Conservation Area is unnecessary since the Department has already completed studies of the area, and has embarked on a special management program for the area. Enactment of an Organic Act for the Bureau of Land Management would authorize the intensification of that program.

Similarly, we have previously explained that we favor amendment of the Recreation and Public Purposes Act to delete from the act certain acreage limitations and other provisions that have complicated and sometimes prevented the development of land for State parks and other public purposes. However, these changes should be accomplished separately rather than as a part of BLM organic legislation. Finally, we do not understand why a study of desert areas is singled out when forests, grasslands, watersheds and other areas often have equally fragile environmental values and deserve the same attention. Our proposal would give priority to any type of fragile lands and resources.

Subcommittee Print No. 1 would authorize and encourage the establishment of local advisory councils for regions, States, and districts. In many instances these councils would duplicate the functions of advisory boards established under other laws. The more flexible authority in our proposal would authorize the Secretary to establish advisory boards and committees as he "deems necessary to secure full information and advice on the execution of his responsibilities." Since many management decisions affect large areas, and sometimes all the public lands, it may be necessary to obtain advice from a board with a broad vision and an understanding of problems throughout the public land States as well as from a board focusing on local issues.

Subcommittee Print No. 1 repeals all authorizations for appropriations which do not contain dollar limitations, and requires public land management agency heads to submit recommendations for legislation that will provide policies, limitations and guidelines for management of the public lands. These provisions would also impose dollar limitations on appropriation authorizations for the Bureau of Land Management.

The Department strongly opposes such provisions. Appropriation authorizations without dollar limitations are important for effective long-range planning and for meeting emergencies that arise on a year-to-year basis. For example, it is crucial that funds be made available so that the Bureau of Land Management can implement or intensify programs immediately when there are fires, floods, or droughts. If annual dollar limitations were imposed on these programs, it would be necessary to authorize excessive funds for them in the event that the demands for the programs were unusually great in any one year. Furthermore, the Bureau of Land Management programs are already subject to review through oversight proceedings and through the appropriations process. Although the meaning of the provisions calling for legislative recommendations is not clear, it appears that it would require the Congress to pass on the administrative details of programs which have already been authorized.

The subcommittee print has a provision which would amend the Wild Free-Roaming Horse and Burro Act to permit use of aircraft and motorized vehicles in management of wild horses and burros and to permit the Secretary to sell or donate excess horses or burros without restriction. These proposed amendments reflect the recommendations in the June 1974 Report to Congress by the Secretary of the Interior and the Secretary of Agriculture on Administration of the Wild Free-Roaming Horse and Burro Act and we support the purpose of that amendment. But, due to the recent court decision declaring that law unconstitutional, we do not think it beneficial to consider the amendments at this time. We urge that this controversial matter be removed from BLM's organic legislation.

I emphasize again, Mr. Chairman, our support for early passage of an Organic Act for the Bureau of Land Management. We believe that the administration bill containing substantive policy guidelines and management criteria would provide an outstanding framework for improved administration of our national resource lands. We urge that it be enacted.

Subcommittee Print No. 1 has some provisions which we have not had an opportunity to comment on in more detail. Later we would appreciate an opportunity to discuss them in greater depth.

Mr. Chairman, if I may briefly make a personal insertion into the statement. The BLM has the responsibility of enforcing numerous controls on 20 percent of the lands in the United States, 60 percent of all lands under Federal control, 450 million acres, in addition to 370 million acres over which it has limited control. The BLM also controls 100 billion acres on the Outer Continental Shelf.

In 1897 the Congress saw fit to enact the original act to establish the Forest Service. If you look historically through the years you will find the Bureau of Land Management recognizes the year 1812 as the year the General Land Office was created; 1934 when the Grazing Service was originated; and the year 1946 when the two agencies were combined into the Bureau of Land Management.

We are hopeful that the efforts of the administration, along with the efforts of your subcommittee can make the year 1975 a landmark year in which an Organic Act is passed, that this country and the Bureau of Land Management so desperately need.

These complete our prepared statements. Mr. Turcott and I and other members of the Department are prepared to answer whatever questions you might have.

Mr. MELCHER. You seem to feel that you would want pretty broad authority for withdrawals or decisions on land management changes, and therefore would like to see us drop from our consideration anything specific on that, and I gather that point of view is reflected in the administration's bill; is that correct?

Mr. HORTON. That, as a general principle, is accurate. In the administration's bill we have no provision concerning withdrawals.

Mr. MELCHER. Nor any provision for congressional review in case of a change of management.

Mr. TURCOTT. Well, sir, we have long worked under an exchange of correspondence and a gentleman's agreement with former Chairman Aspinall and his then counterpart in the Senate that any withdrawal of 5,000 acres or more would come before the committee for consideration 30 days prior to submitting a proposed public land order to the Secretary of the Interior for signature. We have held rigidly to that and so has the Congress.

Mr. MELCHER. Has it worked?

Mr. HORTON. Yes, sir.

Mr. MELCHER. Then, is there any reason not to put it into law?

Mr. HORTON. Well, there are other provisions in there like acreage limitations, the constraints of receiving a formal review by Congress, and so forth, that we feel hamper a very workable process. The fine line we are trying to draw is whether executive authority should properly be contained within this, and which legislative authority should be contained therein. That is an area in the middle.

Indeed, I would have to say that we have been prepared in many instances to go over that line, but in general, I believe it is fair to say that all administrations in the past have supported the consensus that the authority for withdrawal should properly be passed on by the Congress but the specific implementation of that authority should

be a matter for executive determination. Where the line is drawn between those two, perhaps is a matter of judgment.

We have worked very successfully with Mr. Aspinall, as Mr. Turcott pointed out, in sending proposed withdrawals as a matter of information up to the committee.

Mr. MELCHER. Jack, I really don't see that point coming up as a matter of executive or legislative authority, as working against each other. I think we would all agree that if Congress has a concern about a particular withdrawal, surely Congress ought to express that concern.

When we put in the proposed bill that Congress would have the right to express that concern and object to a withdrawal before it was implemented that would mean, in our conception of the language, that perhaps 90 percent of the withdrawals decided upon by the Secretary of Agriculture and the Secretary of the Interior would go forward just as they had planned.

But, there is the possibility that Congress might want to review 10 percent of those and say, no, or after review say, well, it is all right. I think we are talking about a lot of problems here that probably will never exist. If there is something wrong with our language as we have prepared it in print No. 1, if it is too cumbersome, we would like to have recommendation on that.

But, I don't think either Secretary wants to say in any way, shape or form that if Congress has some concern about the withdrawal, that they would not like to have that expressed before the withdrawal is consummated.

Mr. HORTON. I think that is an understandable concern. We have simply said what type of administrative burden this would place upon the managing agencies.

Mr. MELCHER. Well, the only burden is the frame, is it not?

Mr. HORTON. That is one view, but certainly the paperwork to get the information to the Congress is tremendous. A withdrawal should be placed within a time frame which looks toward not only the emergency type of situation but any withdrawal should be made within workable framework.

Mr. MELCHER. My understanding of what we propose in print No. 1 is that in the case of an emergency a withdrawal could be done, bang. Then, if Congress still wanted to review that and reverse that withdrawal, they could.

If that isn't the language you want, you people have a lot more counsel than we have, you have your whole solicitors group and you have people out in the field; you give us the language. If that isn't what ours say, give us one that won't encumber you in case of an emergency, if either Secretary sees it could go like that. You could go ahead with the withdrawal but still let Congress review it, if needed.

I don't think we are going to buy the paperwork argument. We know about paperwork, too, and we know it will inundate our staff having to review your paperwork, but we have to put up with that.

As far as the point of the time frame interfering and you losing some value on the public land by not having the withdrawal, I think that is entirely what we were striving for in our language. I repeat,

you people have a lot of counsel and you ought to use them. If our language isn't what you want, get yours up here.

Mr. HORTON. I think your idea is appropriate and we are pleased to work with the staff of this committee and the members on suggested changes, or pointing out various observations on the whole issue.

But, since I am the one in the Department of the Interior that has the responsibility of either recommending or denying a withdrawal, I know the paperwork is substantial. It comes in weekly in voluminous amounts. This is not the single determining consideration but one we would just like to bring to the committee's attention.

When we put together the reports and analyses either for or against a withdrawal, each package comes to 6 or 8 inches and has to be reviewed thoroughly by the staff and the Bureau of Land Management before it is forwarded.

Mr. MELCHER. Of course, we are talking about withdrawals of over 5,000 acres and that eliminates a large number of withdrawals. So, we are only addressing ourselves to over 5,000 acres.

Mr. TURCOTT. Of course, in the early days of this legislation, we reviewed that matter quite thoroughly with your staff, and there have been modifications made in terms of some of the previous subcommittee prints. Your challenge to me is for some kind of legislation—the current process is by an exchange of correspondence and a gentleman's agreement. I can't speak for the Department on this but I would personally suggest that, the criteria and the format for reporting under certain kinds of submissions in your current committee print, starting under section 204, starting with line 20, be changed.

We, in the Bureau of Land Management, would be more than glad, I feel, to submit a report of that kind on any acreages of 5,000 or over subsequent to the proposed withdrawal process to get public review comments, any hearings, and the like. I think that would be fine, and would give you an opportunity to review it.

Mr. MELCHER. I hope what we tried to do in here was to make sure, if there was an emergency and an immediate withdrawal was necessary, we wouldn't have prohibited that but still permit, if the acreage was over 5,000, a review by Congress. If they did not agree they could make a reversal, reverse the pattern or make some other suggestions.

Mr. HORTON. If I may interject here, Mr. McHale on my left indicates that there is a very substantial possibility of a complete compromise since the last go-round, that we didn't have then. Perhaps we didn't go into discussions early enough. We came very close the last time around.

Mr. MELCHER. Jack, your testimony goes into making a case for leaving the Forest Service out of this, and yet what we have strived to do in this print is to leave the Forest Service in, when management principles and circumstances are identical between the Bureau of Land Management and the Forest Service. We really haven't much of the Forest Service in here, but we do on grazing.

We established a grazing fee and some provisions for range improvements. I think almost everybody is going to agree, if it is good for one, it is good for the other. We have in here on withdrawals, I think, a sensible policy enacted by the Congress that affects the Bu-

reau of Land Management and affects the Forest Service, too; also, we have something on the rights of way.

Now, Jack, I fail to understand why you recognize that it is really essential that the Bureau of Land Management have all this brought together, all the statutes that affect rights-of-way under the Bureau of Land Management, lands administered by them, and yet not include the Forest Service. You have correctly recognized this as it applies to you and the committee recognizes it. Let's get this down into one title of aid bill and make some sense out of it.

While you defer to the Department of Agriculture the judgment on that, I think everybody must agree that if we can modernize the concepts of the Department of Agriculture's rights-of-way across public lands for the Bureau of Land Management, we surely better modernize the same thing for the Forest Service's rights of way, too. As a matter of fact, didn't the Bureau of Land Management administer a lot of rights of way across those lands?

Mr. HORTON. I don't know. They attempted, I think, to administer something, but I don't think rights-of-way come within that; only oil and gas.

Mr. MELCHER. Pipelines do, don't they?

Mr. HORTON. As the result of enacted legislation, not as a matter of traditional operations between the two bureaus.

Mr. MELCHER. I think there was some question when we were holding hearings on the trans-Alaska pipeline where the Forest Service had no statutes to grant rights-of-way over Forest Service lands for oil and gas. I dare say that could be litigated in the courts.

We might find that out to the embarrassment of the Secretary of Agriculture, just like the Secretary of the Interior was stopped by the courts when he was attempting to go well beyond his statutory limitations in granting permits for the trans-Alaska pipeline.

I want to say that we reviewed the question of rights-of-way as something that needs to be brought up to date, something that needs to better reflect the times, a common corridor if you please, and the environmental impact that rights-of-way cause on public lands. Those problems surely exist within the Forest Service.

I hope when we get to the point of ironing out this bill either here or in committee, and in the House and in conference, I hope we don't have to continually belabor the need for having sensible rights-of-way provisions applicable to both the Forest Service and the Bureau of Land Management alike.

I am afraid that the Senate may be considering the passage of a bill similar to what the administration has proposed here which lacks that application; the rights-of-way section applying to the Forest Service. I don't want us to falter on that. I think it is critical at this time to enact sensible rights-of-way legislation for both management areas.

Mr. HORTON. If I might provide a perspective on this, I personally agree with you on what the overall objective should be. If indeed, the rights-of-way proposals or authorities in either agency need to be brought up to date, then I am sure that everyone agrees that it should be done.

The question is one of horseback politics and the chairman appreciates that better than I. Politics is the art of the possible. Can we really get the act this year with the conflicting jurisdictional issues? What about the attention that the Bureau of Land Management ought to give to this, and can we really say it is not an important enough issue?

I certainly agree with the principle that it should be undertaken but delays would be necessary to include the Forest Service. We would have a cleaner shot without it. Then, look at reforms to the various Forest Service authorities separately.

Mr. MELCHER. As I understand the House rules, the jurisdiction on all lands administered outside public domain are with the Committee on the Interior in the House. If that isn't right, I would like the parliamentarian to correct me. But, specifically, when it comes to provisions of grazing and rights-of-way, this committee has been designated as having jurisdiction for both the Forest Service and the Bureau of Land Management, lands created out of public domain, and all of the rest of our public lands.

I would like this reviewed by our staff and the House parliamentarian. If there are any questions, this committee ought to try to seek the advice and consent of the Committee on Agriculture. At least three of us on this subcommittee are also members of the House Agricultural Committee. So, we have no desire to infringe on their jurisdiction; certainly no desire to be hampered by jurisdictional arguments. We have researched that very point and talked to the Forest Service about where they think jurisdiction lies.

I recognize the gentleman from Nevada, Mr. Santini.

Mr. SANTINI. The first question, Jack, that I would address myself to is that of the wild horse and burros.

As I understand your testimony before this committee this morning, it is your recommendation that we do nothing at this juncture?

Mr. HORTON. I think that is the only appropriate advice that the administration and the Department can present to the committee today, since the issue is under litigation. The committee does appreciate, I am sure, that both Mr. Turcott and I testified in favor of the additional authorities for the management of the Wild Horses and Burros Act, but we are advised, since the matter is under litigation and the Secretary himself is a defendant, that it simply is improper for us to proffer advice formally. So, that is our position until that is cleared up.

That doesn't say we do not support these types of management authorities for better management of the Wild Horses and Burros Act, but while the issue is in the courts, it is improper for us to make comment.

Mr. SANTINI. At least one judicial district and perhaps more—I know in New Mexico, I believe in the Ninth Circuit Court—it is not my understanding of that law that it precludes a legislative action in that realm. Now, it may render a nullity if an adverse decision is rendered, but it doesn't say you can't proceed forward in the event an affirmative of the law is on the books, conceptually.

I think you might agree that we could find ourselves 2 or 3 years down the road before judicial review is exhausted and that is a very

optimistic estimate. Meanwhile, our wild horses and burro problem proliferates and there is no solution. All parties agree it is a problem, but what do we do?

If we get a favorable judgment in terms of users and landowners on the Wild Horses and Burros Act, we would find ourselves then having to initiate legislation in order to implement that favorable decision. I find it more desirable to take the initiative at this point than the position that it might be rendered adverse, but take that initiative now and have the law in existence and hopefully it can be reinforced by a favorable judicial review.

Mr. HORTON. Mr. Santini, I am not suggesting in any sense it would be improper to enact legislation that would address the problem in question. I think the best position, since I am a representative of the Secretary, who is, in fact, a defendant, is to point out to you and the staff what our position is, that it is well recorded in the testimony we presented to the last session of the Congress. We will provide that for your use. Our position has not changed.

I was suggesting it would be improper for me as a representative of the defendant to be making a formal recommendation. Our position is well established; it has not changed and it is certainly available to you if you would like it.

Mr. SANTINI. I am familiar with the position. I was only concerned by the projection of 2 or 3 more years of inaction on this particular issue.

Mr. HORTON. We concur wholeheartedly and we are hopeful it can be resolved so that positive management can be applied to the wild horses and burros by somebody.

Mr. SANTINI. Related to the issue is a reverter clause on mineral leases, which I believe is contained on page 5, second paragraph. The subcommittee's print No. 1 proposed a reverter clause. The recommendation of the Department is to omit that reverter clause. Would you elaborate on the basis for that?

Mr. HORTON. If I might, I will provide the general principle and then Mr. Turcott or Mr. McHale will elaborate on that. This is the position we have also taken in our testimony before the Senate committee. Subcommittee print No. 1 and S. 507 provide that even if minerals are not known at the time a piece of land changes hands, and if the subsurface mineral resources are developed [within the past 20 years in S. 507], they would revert back to the United States.

We believe that a reverter clause places an unnecessary burden upon the person to whom the lands are patented. It is very clear that almost all of the lands deeded with a reverter provision would be transferred and held in a position of uncertainty. If the person seeks to construct or develop those lands, and he has to use his title for that, and the title were clouded by the uncertainty as to what might happen with respect to the mineral resources, this may hamper him from doing this.

Mr. SANTINI. It would impair the marketability of the title?

Mr. HORTON. Essentially, he would have an uncertainty and a cloud on the title.

Mr. TURCOTT. There are many more areas coming to the fore. In the last session of the Congress, we had 23 private relief bills up here on this same issue, wherein there is a cloud.

We feel that we should help these people to eliminate a potential problem in obtaining financial arrangements, securing loans and so on, providing collateral, where there is a cloud on their title, as provided here. What we feel is that we should really have professionalism from the Geological Survey which means they should make these classifications. They should be able to determine if there is something really of principal value there which the United States might want to retain or would want to sell. I don't think we are too professional if we don't have faith in the classification process to determine that.

Once the conveyance is made it should be permanent and not reversed. People can't get loans without this. We are being flooded with the private relief bills.

Mr. SANTINI. Twenty-three, you say?

Mr. HORTON. Quite a number of them were passed; 23 were reviewed, I believe. I would have to check that figure.

Mr. SANTINI. With regard to the proposal for recordation of mining claims, what, Mr. Horton, is the present status of the BLM with regard to the processing of mineral patents?

Mr. HORTON. Essentially the recordation would require a person to record his claim with the BLM so there would be a starting place and a standard system for recording these claims so that the public would know where they were, their location, and size.

Mr. SANTINI. I understand the motivation, but I am wondering about the status on processing the mining patents.

Mr. TURCOTT. Not all of them come to me and I will have to furnish them for you; they are in our appropriation requests this year. In the President's budget there is a slight increase for this process. But I know we are 400 manyears backlogged at the Bureau.

The total process of evaluation, examination, and adjudication of an unpatented mining claim on through the request for the mineral survey, then finally leading to the patent, this is a very tedious process and very expensive.

Mr. HORTON. Nevada has the biggest backlog of any of the States where we are involved.

Mr. SANTINI. The gentleman from Alaska.

Mr. YOUNG. Why did you put the 3-year provision in the bill if this is that backlogged? What are you going to do with the backlog?

Mr. TURCOTT. The way the administration bill reads in keeping with an interpretation under the Alaska Native Claims Settlement Act, where there is a similar provision, the filing of a request for mineral survey will serve as the request for the patent. That is the key; not that we can get everything done in 1 year or 3 years.

The way this bill reads I would interpret that it is the request for the survey that is the key.

Mr. YOUNG. But, it is a case of inactivity and inability to convey patents on claims. There have been applications, and I can site you cases where the filing has already been done. Then the BLM says, "You can't continue the process of taking minerals until the patent is granted." That has happened in my State. But, if you have a backlog and an inability to act, then this proposal here would compound the problem.

Mr. TURCOTT. I am going to have to refer to the instant cases to respond. All I can say is it is tied up with the Alaska Native Claims Settlement Act and it is most complex, I agree, sir.

Mr. YOUNG. It worries me about the time frame. I can understand the desire to have it recorded in the BLM office, but unless there is some specific wording which grants the applicant with the filing of the application, all the rights and privileges of the survey claims, well, otherwise, you don't have a claim.

Mr. TURCOTT. I want to go on the record as saying in Alaska the filing of a request for a mineral survey is the key point, and any rights that he has would be then preserved pending adjudication, until the end of the process.

Mr. SANTINI. Under the proposed recordation program, would the person filing for a record claim have the same rights and entitlements and title interest, or at least use interest, as someone filing for a patent under the existing law?

Mr. TURCOTT. No, sir; the mere fact of filing a recordation of a mining claim is not enough. It is the fact that he has done enough work that he wants to proceed with it. He makes the effort to file, to have the mineral survey done, not just the mere recording of the fact that he has established an unpatented mining claim.

Mr. SANTINI. Then my question is, recordation in and of itself confers nothing more than a noticed interest in the person recording; it doesn't establish any quasi or legal entitlement to the minerals contained there, such as is conferred by a patent, once granted?

Mr. HORTON. You simply have to record that claim which you are not required to do now.

Mr. SANTINI. Aren't we looking then at a dual procedure and perhaps compounding your problem considerably? We are looking at the recordation problem, and I appreciate the record and location clause in that. But, you are looking at the recordation problem in addition to a patent one.

You are 400 manyears of work behind now in patents. It seems to me the recordation objective would perhaps compound the man-working hours problem you already have.

Mr. HORTON. I agree with the thrust of your question and certainly that of Mr. Young, and it will be my aim to initiate ways, if the Organic Act is passed, to substantially increase our efforts with the OMB for more adequate funding for this. We seek authority support with appropriate resources from the administration.

But, you must understand that these mining claims are deterrents to intelligent land use management of the public lands. We don't know where the claims are; we have no time frame in which claimants have to seek a patent. When we worked with them under the Alaska Native Settlement Act, we didn't know what the priorities were or the status. This is an effort, of course, to reform that.

Mr. TURCOTT. This is Mr. Hoese of the Solicitor's Office, who can discuss in general terms any rights that go with the filing of an unpatented mining claim.

Mr. HOESE. The recordation by itself will not necessarily grant the person any property rights in regard to exclusiveness or anything like that. All it does, is it gives him first crack at discovering minerals in the area he has filed as his location.

He still has to make a valuable discovery. He is allowed exclusive rights to search for that just for a reasonable period of time and if

he doesn't make that, of course, someone may relocate his mining claim.

Mr. SANTINI. What is that reasonable time?

Mr. HOESE. I don't know. It has not been quantified. It is just a reasonable time for you to pursue the claim. It carries no definite period of time.

Mr. YOUNG. We are getting involved in the mining laws anyway, in the repealing section. When you give a vague answer such as a reasonable length of time, who determines that, you?

Mr. HOESE. No, that would be judicially determined if it went too long. But as far as a reasonable time goes, we would not press that point unless we wanted to use the land. That is, if the claim was located on land necessary for a Federal program. At that time, we would probably contest the mining claim.

The reasonable time doesn't serve any purpose to the Federal Government, but only to prevent somebody from relocating the mining claim before the person making the claim has time to make his discovery.

Mr. HORTON. To emphasize that point, this provision in the proposed Organic Acts provides protection to the applicant either for a claim or for a patent, which is to say, if he had complied with the recordation or had complied with the application for a patent, then the rights that he might otherwise have had would not be continued. This would not be the case if he failed to do so.

Mr. YOUNG. But we are reading from our bill, not theirs. They are proposing the changes, we are not.

Along these lines, Mr. Secretary, the view in your proposal, as far as the mining law of 1872 is concerned, the only real change other than recordation is: "The Secretary is authorized to issue such rules and regulations pertaining to prospecting and mining as he deems necessary to protect the environmental quality of lands administered by him."

That is a pretty well loaded pistol as to that law. Under this a prospector might have to put up a bond. I think that violates the concept of the mineral searching laws. I do believe, if you are going to do any prospecting, you have to file an environmental impact statement today; you can't have blast mining, for instance.

But, this would actually take the mining law of 1872 and give a complete interpretation of that law to the Secretary. With all due respect, I think that is a violation unless you want to repeal that law, which I don't.

Mr. HORTON. We are only looking now at the area in which the new authorities under the Organic Act touch upon the 1872 mining law and we are being very careful not to propose it be amended substantively. That should be a separate piece of legislation.

We feel our proposal for recordation is an intelligent step to propose. But, I would agree with you that, essentially, we don't want to go too far into the Mining Act. I don't believe we have gotten into bonding at all.

It is my understanding that neither the Forest Service nor the Bureau of Land Management requires an environmental impact statement on mining claims. Now, depending upon the magnitude of

the operation it could involve an environmental impact statement, but it need not.

Mr. YOUNG. Doesn't a part of the act say there can be no blasting at all without the approval of the committee?

Mr. HORTON. If you have hardrock mining, if you need to blast, yes. But I am just saying that I don't want us to get into this—I will differ with you; I do not feel we should deviate from the mining laws as they are on the books today unless it is justified.

One of the problems in the Interior Department is the consolidation and the attempts have not allowed persons like this gentleman and myself, any two people, to do some of these things and yet these rights are going to the bigger conglomerations. This was proposed last year and the idea that mining now has to be regulated for just a few individuals, disturbs me.

We are talking objective bidding this bill. If we have a minimal concept, it is a disservice to the American people. It would be a great service to the Department but a disservice to the American people.

Mr. MELCHER. Will the gentleman yield?

Mr. YOUNG. Yes.

Mr. MELCHER. Would you not agree that the Forest Service and the Bureau of Land Management under existing law must prevent degradation of the environment?

Mr. YOUNG. Absolutely. I say they have that capacity already, but I don't want to preclude anyone from filing a claim.

Mr. MELCHER. We agree on that. I think we also agree you are not to use the protection of the land in some way to change the interpretation of the act to specify who can locate on it.

Mr. YOUNG. Yes. They already—

Mr. TURCOTT. Well, sir, I recall several months ago an exchange of correspondence with the chairman concerning mining claim regulations and the chairman was somewhat disgruntled that he didn't know the Bureau of Land Management was working on drafting mining claim regulations under the 1872 mining law, but not concurrent with the then Forest Service effort. We assured him we would proceed and the committee would be involved.

I feel that the proposal you are talking about in the administration bill does just that; it makes it clear once and for all. Under certain circumstances the Bureau of Land Management should have regulations that involve planning for the mining claim, reclamation, certain environmental factors, location of the roads, and so on. This is the present era.

There should be some aspects of this contemporary conservation with respect to mining claims on public lands.

Mr. YOUNG. If we put this into the law and I am a member of that group which wishes to deprive this Nation of the minerals we are going to need, under that law, could I file an environmental lawsuit against you if you were to disturb the surface of the land hold up the process, regardless if the statement was filed?

Mr. HOESE. That is your prerogative.

Mr. YOUNG. They don't have that under the 1872 law; that is what I am trying to preclude. If we put that wording in there, it is an

area that can cause us tremendous problems, legally. We have enough now in court, defending the administration in the courts.

We went through the Alaska pipeline concept. I want to be sure we don't go through it again.

Mr. HORTON. Well, that certainly is an understandable worry and certainly is a concern shared within the Department. Let's say there are several issues, one of which is not to prejudice the successful enactment of the Bureau of Land Management Organic Act which are issues that relate more directly to other pieces of legislation. We are totally prepared to work with the committee on these issues, but I would offer to the committee that we have not gone very far into the 1872 mining law. It is the intention of the administration to present to the Congress proposals, particularly with respect to the Mineral Leasing Act of 1950. We have already testified to these.

Mr. YOUNG. Mr. Secretary, one of the provisions in the subcommittee bill we wrote up last year related to extension of the Homestead Act, primarily in Alaska, and I know you were opposed to this. I think your justification was that there was a big flood of applications for homestead last year?

Mr. YOUNG. From Alaska there was a big flood.

Mr. TURCOTT. Currently, Alaska, since last year's hearings, was behind in spite of all of the land actions that are permitted. We have been withholding approval where necessary to resolve conflicts that are usually due to provisions of the Alaska Native Claims Settlement Act.

Mr. YOUNG. That is the problem. To my knowledge, any application for homestead filed after 5 years ago has been discounted because of the land freeze.

Mr. HORTON. That is not completely true. I would say that my view is that one of the gravest problems facing the State of Alaska is the inability of private people to actually own land.

The reason we are in this situation is understandable with the Alaska Native Claims Settlement Act. I believe if Alaska is ever to have long-term economic viability, that either from Federal or State legislation, much more land must be offered; less than 1 percent of the land is owned privately.

The question appropriate to address is whether the homestead laws are the best facility for making private land available or whether there should be other disposal authorities that we should subsequently look at.

As I recall, when the Department first withdrew land in Alaska for study for the Alaska Native Claims Settlement Act, as an effort to emphasize our concern for private ownership, we left all the land we could not withdraw. That subsequently has been withdrawn for protective purposes.

We have not reached a solution to the problem which is a major one facing Alaska. My concern, having been there for a year, is whether the extension of the homestead laws with respect to Alaska is the best route. We mustn't lose sight of the main principle here.

Mr. YOUNG. I am glad to hear you say that because the lack of ownership, private ownership, is a very damaging state of affairs in Alaska and damaging to the social aspects of the State, too. I am not wedded to the Homestead Act if we can develop another act.

Mr. SANTINI. I would like to stress my resistance to the proposed language contained in the Department's bill. On page 26, paragraph D, it states:

The Secretary is authorized to issue such rules and regulations pertaining to prospecting and mining as he deems necessary to protect the environmental quality of lands administered by him.

All entry of that kind of language incorporated in the bill if just fraught with problems. I think it ought to be addressed and examined in the context of the mining law revisions. I hope you will consider at least deleting language which is all encompassing in many instances, because I don't think it contributes to the implementation of this kind of bill.

I, at least, have a personal apprehension about the administration's application of that kind of language without guidelines or directions or an indication of the congressional intent.

With regards to the rights-of-way provision, I am concerned about the administrative implication of the rights-of-way. I envision, and I think pragmatically so, if you think you have got problems in patents, wait for the rights-of-way to hit. You could conceivably be 1,000 man-years away from being able to cope and should address that horrendous potentially kind of a problem. What are your thoughts on that?

Mr. TURCOTT. Are you talking to the committee or the administration bill?

Mr. SANTINI. Committee or administration, some modification in the committee print.

Mr. TURCOTT. Well, with relation to the burgeoning initiatives and energy development on the public lands and the current rights-of-way law and the aspect of contemporary land use planning, and, most particularly, the application of the court precedents in respect to the National Environmental Policy Act, we have a major program in the Bureau.

The administration proposes to consolidate into one place what the administration felt was the best principles of many rights-of-way authorities and application of the principles, and the court cases. I assume that the committee, in its subcommittee print, is very concerned with some of the details of this processing, also. It is quite detailed in subcommittee print No. 1.

So, to address your question about the paperwork and the burden, it is here, whatever we do, but I think we need some consolidation and clarification. We are hoping to streamline it as much as possible.

We are involved in rights-of-way that go from the California coast into Utah. We are involved in many such proposed rights-of-way. If we go from California to Chicago, we are going to cover thousands of miles of public lands. We have gotten very involved in environmental planning. It is just going to be a tough problem to work out and I don't see the end of it.

Mr. SANTINI. Really, it is almost an administrative impossibility to talk about potential language without going to the extreme of hiker permits and driver permits and it might be there will be all kinds of individual land users, hunter permits, and the like. The opposition has been expressed that this would represent simply an impossible

administrative burden to meet or cope with. Right now, I am trying to meet the major rights-of-way on the public lands and we are overwhelmed.

Mr. TURCOTT. The only thing is, there are provisions in both bills that try to give access, subject to the existing law, to allow free access to the public. There is nothing to prevent hunting and fishing and the like. This is provided in the Taylor Act.

Where the burden comes—and I must tell you this—is through the efforts of the 93d Congress and perhaps some was in the 92d. There is a combined approach through the amendments to what we call the Sykes Act and the Rare and Endangered Species Act. Congress has mandated a rigid system of controls in certain specified areas under those acts. In areas extremely valuable for wildlife purposes, there is provision for enforcement authority and the requirement for permits at certain times for hunting, and fishing, and the like.

So, yes, we have a significant problem. All the land management agencies do. They are gradually working up to applying the provisions of these two amendments I mentioned.

Mr. HORTON. The principles, with respect to the Forest Service and the Bureau of Land Management, the authority for the administration and the granting of rights-of-way has been unclear and the goal is to provide a consolidation of that. Nothing here, I think, would go to hiking or driving permits.

But, whether or not we address the rights-of-way authority issue, that is not going to diminish the pressure on the Bureau of Land Management for the granting of rights-of-way for different purposes. As to the hodgepodge of laws the Bureau of Land Management administers itself, clean that up and provide that authority.

The public isn't going to be turned off. It will still come to the Bureau and others and they will say: "We need a right of way from here to there for this purpose." So, there is a point of judgment here at which the Federal Government, of course, must stop exerting its authority for every small purpose.

Mr. SANTINI. To follow your line of thought, because of the issue of potential constitutionality that could be asserted within the realm of the endangered species, do we not have the same constitutional issues; shouldn't we not then take the posture at least the Department should take the posture, of not advocating any particular legislative enactment on our part because it might well be the subject of an unconstitutional determination by the court?

Mr. HORTON. I don't think I could agree with that in any sense because the two issues are not that similar.

Mr. McHALE. There might be a little confusion here. Our use of the word "permit" in the right-of-way provision was not in terms of a permit to go on the land to traverse it. What we are talking about here are permits ancillary to rights of way for a person to use a tract of land temporarily in connection with a more permanent right of way; construction camps, storage areas, things of that kind.

We are not talking about a ticket to get across the land.

Mr. SANTINI. I only suggested that the apprehension has been expressed.

Mr. McHALE. We share that.

Mr. SANTINI. One final issue pertains to the conferring of law enforcement authority upon the Bureau of Land Management. I would like to invite your comments because I shared, yesterday, the apprehensions of many people in the State of Nevada and all those affected by the public lands environmental impact problem, that this would propose an encroachment of a large, Federal armed force coming on the land to deprive people of—as the attorney general of the State of Nevada characterized it in your committee hearing held in Reno on August 22, 1973—“a Federal army upon our State.”

You can appreciate my constituents' sensitivity. I can't quite buy a biologist being turned into a law enforcement officer, much to his chagrin. I have seen the experience of the Park Service trying to cope at Lake Meade with the third largest incidence of misdemeanors in the United States. I really don't want to see the Park Service turned into traffic cops.

I have spent many days trying to introduce them to the significance and the subtleties of the *Miranda* decision and the search-and-seizure laws.

Mr. HORTON. It was ever envisioned that the Bureau of Land Management was a law enforcement agency. There has to be enforcement authority conferred in order to implement the laws. I would strongly urge, and I believe it is practicably feasible, that a provision amending even the Subcommittee Print No. 1 could provide that kind of enforcement authority by contracting it in the first instance to local law enforcement authorities, which is being done partially by the Park Service now. The Bureau not having that authority, has not done it.

Incidentally, we are, in section 308 of the administration's proposal, seeking to cooperate with the appropriate State and local regulatory enforcement agencies.

Mr. SANTINI. The enforcement should either be through the county or the State enforcement authorities. What you perhaps should consider and would be of interest for the record, is an evaluation of section 303 of the Subcommittee Print 1, which reads as follows:

In connection with administration and regulation of the use and occupancy of the public lands, the Secretary should cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof with the view of achieving maximum feasibility reliance on such regulatory and law enforcement officials in such administration and regulation.

To reach this objective, the Secretary shall negotiate annually with such officials and offer them a mutually satisfactory contract under which such officials will assist in the administration and regulation of laws and occupancy of the public lands, and the Secretary will reimburse them for the expenditures incurred by them in rendering such assistance.

Where such contracts are in force, the Secretary shall use his own personnel to exercise the authority granted to him by subsection C of section 302 of this necessary to achieve an adequate level of enforcement of laws and regulations Act only to supplement the activities of State and local officials to the extent governing the use and occupancy of the public lands.

You can appreciate the difference in thoughts that are suggested by the language just read into the record; the language in the print and the language in the administration's proposed bill. This places the first responsibility of law enforcement at the State and local level, with the addition when necessary, if it should exist, of any supplementing law enforcement assistance.

Mr. HORTON. If it is agreeable to the chairman, we would like to comment on that in writing. I would point out that the first part of what you read is identical to 308 of the administration's proposal.
[The information follows:]

Mr. Santini has proposed that the Secretary of the Interior would be required to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof with the view of achieving maximum feasible reliance on such regulatory and law enforcement officials in the administration satisfactory contract under which such officials would assist in the administration and regulation of the use and occupancy of the public lands. The Secretary would be required to negotiate with such officials and offer them a mutually beneficial and regulation of use and occupancy of public lands and be reimbursed by the Secretary for their expenditures in rendering such assistance. The Secretary would be able to use his own personnel only to supplement the activities of State and local officials to the extent necessary to achieve an adequate level of enforcement of laws and regulations governing the use and occupancy of the public lands.

We do not favor this proposal for several reasons:

If major responsibility for law enforcement is in State or local enforcement officers, under contract, BLM will not be in a position to arrange priorities or to emphasize what aspects of administration are to be enforced most assiduously.

In some circumstances a failure of the contracted local law enforcement authority to pursue a matter may be in the nature of a veto on Federal decisionmaking.

It has been the experience of other agencies that without strict management supervision contract enforcement services often result in poor performance. Thus it is essential that there be a Federal enforcement authority that supervises State and local operations under a contractual agreement.

Federal enforcement officers must qualify under the appropriate Civil Service Category which has specific requirements for training. In addition the Department of the Interior's Manual has additional strict standards that must be met. Not all State or local enforcement officers have the required training. Thus, it is possible that either or ability to enter into contracts for services might be severely limited or our firm position as to personnel requirements compromised.

There would have to be extensive training of the contracted enforcement officers in the laws and regulations under which the Bureau operates.

If State and local law enforcement personnel were contracted for on an annual basis it would create difficult budget problems of compensation whether they should be paid a fixed salary, or on the basis of hours actually worked, etc.

It is our intention to establish a small law enforcement staff for the BLM with highly qualified people who meet all the Civil Service requirements. In addition to the management and planning unit that will be established in the Washington office, it is anticipated that initially a special agent will be assigned to each State and some of the high activity district. These people would need arise.

In addition we will enter into cooperative arrangements with other Federal agencies having law enforcement officers (e.g. National Park Service or Fish and Wildlife Service) in order to maximize their availability and service to the Department and its component bureaus. Agreements will also be entered into with State and local law enforcement officers for assistance.

The enforcement provisions and those relating to cooperative agreements which are in H.R. 5224 would give BLM the kind of authority available to other land managing agencies—an authority that is workable and effective without circumscribing the operation by delineating requirements which may hamper or delay enforcement activity or reduce its effectiveness.

Mr. HORTON. One of the major problems of enforcement is the magnitude of the land that would need enforcement. In relation to Alaska, the Bureau of Land Management and the State Director there, implemented a regulation that track vehicles would not be al-

lowed on the tundra at the time of the permafrost because of the scarring of the ecosystem.

The Bureau of Land Management itself doesn't have the authority to enforce that. If they found a whole army of those vehicles they could do nothing. If the authority was first with the State and local law enforcement agencies, the difficulty would be that they are down in Fairbanks and wouldn't have the resources, financial or otherwise, to patrol this whole area.

Mr. SANTINI. The Bureau of Land Management does not have an organizational infrastructure that, I think, at least is a complement to your success. We believe the people who know the land should have limited authority for managing the land.

You can understand the sensitivity to massive Bureau of Land Management armies out there trying to enforce everything.

Mr. HORTON. That is not the intent of our provision. Section 308 indicates the Secretary has the authority to cooperate with the State and local officials.

Mr. SANTINI. But there is a problem of conferring upon an individual who is not either inclined or disposed to cope with the confrontation of a gun-to-gun situation that might arise, for example, the situation of a violator on public lands.

Mr. HORTON. I agree. Mr. Turcott will share his thinking on this.

Mr. TURCOTT. Well, even with the limited law enforcement authority we have now, the only authority we have comes under the Wild Horses and Burros Act, and from the Sykes Act amendment. We have gone into a very initial law enforcement program.

Our policy position is that the personal qualifications for arrest authority granted to any of our people will be the same qualifications as of an FBI agent. In addition to that, as your committee print No. 1 so carefully points out, there is even a sentence which says there shall be training accomplished by these people before they take on this responsibility.

In addition to that, it came up in both congressional bodies last time the question came up. I know what the attorney general said in Nevada. I read it word for word; it is a good scare tactic. He may have honestly felt this way. We didn't confer with him, but the enforcement group is going to be a small force. I am sure that the functions of this group will be carefully scrutinized by this committee in terms of numbers, activities, and functions; and by the Appropriations Committee.

We have a recent report on this matter. We are not talking about 1,000 or 500 men. There will be probably no more than 100 to 150 men concentrated, in part, in such areas as the Southern California Desert where we have people problems and all that goes with it.

In the State of Nevada there may be no more than one or two. If things don't go well and we need more than that with arrest authority, we will have to bring them in. In addition to that we see no way that we can really deal with the problem without a reimbursement authority with the State and local law enforcement bodies; both proposals are requesting that.

But, we have found not only the example Secretary Horton mentioned in Alaska, but some closer to you and me. The Easter holiday. There is no way the State of Arizona or California or Nevada can

cope with the situations they have. The State and local law enforcement officers can't give enough help, contract or otherwise.

The Bureau of Land Management would not attempt to put enough people on board for the seasonal events that occur on the Easter weekend on the desert. We must have authority to secure help from others.

Mr. HORTON. The Bureau of Land Management has jurisdiction over something in the area of 14 million acres in the California desert. Our figures for last year showed about 14 million visitor-user days or approximately one person per Federal acre. Even though we doubled the management force, it would still be more critical on the Federal lands.

We now have only a total force for planning and administration and management of 29; that is, one Bureau of Land Management ranger per 400,000 acres. That figure would be compounded if you divided up the number serving out there to manage the lands.

There is a very, very severe problem in management with the number of people we have employed in the past to manage the lands. Rather than have a massive army of the Bureau of Land Management, I would suggest that we look in another direction to the inadequacies of the personnel resources we have put out in the past.

Mr. SANTINI. I agree, it exists. However, I cannot agree that the conversion of the Bureau of Land Management to parttime policemen in whatever context it is conferred, is the solution to the problem.

I do feel you have existing law enforcement agencies from the State police down through the county sheriff in every county, in every Bureau of Land Management use area; at least in my State and we represent the second largest area.

I walked over much of that land in the last campaign and conferred, talked and visited the local law enforcement agencies. They are receptive and they are concerned. They share a common concern in terms of trespasser abuse of public lands. To them in the county that land is far more important to them than to the Bureau of Land Management officials in Reno or Las Vegas. They are seeing some of the violations committed.

You are going to have a special cadre of police within the Bureau of your own men. I don't know how you can augment that except by going to the State and local authorities. On Easter weekend one man is not enough; you are going to have to go local.

Mr. HORTON. We agree that that is going to have to be part of the total program, but here is the problem. Say a present Bureau of Land Management patrolman comes onto a pickup destroying petroglyph samples in the mountains. That is a clear violation of the Antiquities Act.

Mr. SANTINI. Not true. He has the same authority vested in him as a private citizen seeing someone in the commission of a misdemeanor. He has immediate arrest authority. It has been enunciated in this bill. I could if I wanted to affect an arrest myself under such a circumstance. The real question is, who is to implement that authority that exists.

Mr. HORTON. We wouldn't have the problem we do on the land if we simply viewed the citizen's arrest authority as a way of mitigat-

ing the problem. It hasn't worked. If there was any way of putting a patrolman on the public lands we would be in favor of it.

We are not in a de novo issue; we cannot act on what is a massive problem. That problem is that the largest land owner in the United States is unable to enforce its laws.

Mr. SANTINI. We agree with the problem but not the solution. I can see the Park Service confronting a youth on the beach, the youth being obnoxious. This happens on a density weekend and the youth is obnoxious verbally, obscene in a conversational form and the officer draws a gun and shoots the boy. Then you have a situation of the Park Service being tried for criminal homicide. I think it is a very big problem on both sides and I feel it would be ill-advised to go this route.

Mr. HORTON. Giving authority to the State and local law enforcement agencies certainly wouldn't alleviate that. It could happen to any law enforcement officer who wasn't equipped with the proper training.

Mr. SANTINI. But, State or local law enforcement officers work on a daily basis, there you have someone with a little more knowledge and a better capability of coping with arrest problems than you do someone without that ability.

Mr. HORTON. I think it says, so long as the employee is trained in fire arms.

Mr. SANTINI. That is a rather nebulous sort of a condition for assuming the total responsibility of a law officer confrontation in the desert or in any other place. You are not going to turn a biologist into an effective law enforcement officer.

Mr. TURCOTT. As I said, I can provide you with the personnel announcements, the bids for these jobs. Anyone we delegate must have the same qualifications as an FBI agent and that includes a lot of things: academic training, work experience, et cetera.

Mr. SANTINI. You feel a professional FBI agent will be interested in patrolling the wastelands?

Mr. TURCOTT. We have had FBI officers apply for our positions, yes.

Mr. MELCHER. Under the present circumstances it could be very attractive to quite a few in the FBI.

Mr. SANTINI. It doesn't say a number of those requirements are enunciated in this.

Mr. TURCOTT. I agree. If you want the qualifications, I will be glad to get them for you.

Mr. SANTINI. This is a difficult area, the manpower. I know.

Mr. TURCOTT. There is the part-time deputy problem that you get into, also. I have the same concerns you do. As a person in the Bureau I have been criticized by my own people for not delegating the arrest authority. I insist that these men have the necessary qualifications and I check into their training and education and experience. I want to see for myself what kind of a person they are.

Mr. SANTINI. I think you are building another sort of nightmare administrative problem that you don't need at all. You can reasonably contract this out; you don't need the problem in your yard. You don't have to convert part of the agency into policemen.

Mr. TURCOTT. I think this is one of the key provisions of the Organic Act in its limited way.

Mr. HORTON. We have the proposed alternative to section 303 which the Committee staff has just been given. We will commit ourselves to a thorough review and do it in the light of this discussion with particular focus on your own sensitivity to this, a lot of which is shared in the department.

We have a problem now which is growing in geometric magnitude on the public lands and we have a responsibility to both the administration and to the Congress to do something about it. I think if the proposal here could resolve that problem we will support it, and if not, we will comment with as much directness as we can.

Mr. SANTINI. No further questions.

Mr. MELCHER. Jack, in the discussion we have had in the last hour concerning the provision on page 26 of the administration's bill referring to protection of the environmental quality of the lands administered by the Secretary and his authority to issue rules and regulations pertaining to prospecting and mining as he deems necessary to protect that, I think the thrust of the administration's bill is from a different direction than the thrust of the subcommittee's. But I think the results you want to obtain in that subsection D and what the subcommittee hopes to obtain somewhere in the final version of the bill, are one in the same.

But, I think we are starting at the other end. I think we are attempting to say that the Secretary indeed is authorized and directed to prevent degradation to the surface of the land; and I mean that in its broadest extent. I mean also to water sheds and anything that lessens the value of the land or causes it any damage.

We are striving to say that, and I think you are trying to say it, specifically as to mining. We both have our problems. Let's start from the same direction, let's put our thoughts into the final version of the bill, a section that indeed does say that the Secretary must prevent that degradation. Then, I don't think we will have any problem.

I don't see any necessity of restricting ourselves on that provision to the mining laws because we are also looking at anybody else that might do it. We get away from the question of what an ordinary guy does who wants to prospect, who is somewhat a little more advanced than a rock hound, and the guy that goes out mining with a bulldozer. The guy with the bulldozer may do a lot more damage than the other man.

Let's work that out then between our people and get a common language so it is not necessarily too broad. Let's put into words what we legally are talking about and forget about the mining law part of it. We know eventually another subcommittee is going to review this Act of 1872 and perhaps come out with a bill, but in the meantime, we feel that both the Bureau of Land Management and the Forest Service has that implicit authority to make sure that the watersheds, and the land itself is not damaged. Let's clarify that.

Mr. HORTON. We will certainly work with you on the language.

Mr. MELCHER. Mr. McHale, last Friday I asked for a solicitor's opinion on the question of whether or not a Member of Congress or an employee of the Bureau of Land Management, through a corpora-

tion, can participate in leases, sales or what have you, of public lands. Have you gotten that?

Mr. McHALE. We are not ready. We expect to have it for you very soon. We will expedite it.

Mr. HORTON. My understanding of the Department with respect to the Solicitor's Office is that oral opinion are numerous so written opinions are more expensive and more time consuming.

Mr. MELCHER. The axiom may still hold that a lawyer's curbstone advice is worth just what you pay for it.

I thank all of you.

I next welcome John R. McGuire, Chief of the Forest Service, Department of Agriculture.

Mr. McGUIRE. With me is Russell McRorey, Associate Deputy Chief of the Forest Service. I am prepared to read my statement, if you like.

Mr. MELCHER. Without objection, your full statement will be included in the record in full and you may proceed in whatever manner you wish.

[The document referred to follows:]

STATEMENT OF JOHN R. McGUIRE, CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the Committee: We are glad to join with you in your consideration of organic management authority for the Bureau of Land Management. The Administration's proposal for a "National Resource Lands Management Act" was recently transmitted to the Congress by the Secretary of the Interior. We support that proposal as a vital step in providing status and a basic management framework for the public lands administered by the Bureau of Land Management of the Department of the Interior.

The Administration's proposal would not affect the authorities of the Secretary of Agriculture as they pertain to National Forest System lands. Existing authority for management of the National Forest System is basically sound. It has been fashioned over a period of more than three-quarters of a century in a way that has proved generally flexible, workable, and adaptable to modern needs and conditions. We believe that the priority concern at this time is to provide a statutory foundation for management of public domain lands by the Bureau of Land Management. We strongly prefer that the scope of the proposed legislation be limited to lands administered by the Bureau of Land Management.

In the 93rd Congress, the Committee in their consideration of the "Public Land Policy and Management Act of 1974" considered revising and combining some of the existing authorities applicable to National Forest System lands with the proposed authorities for the lands administered by the Bureau of Land Management. In late Committee action, the National Forest System lands were taken out of the general application of the legislation. We favored this action.

We understand that the Committee would like to have us address today those portions of the Subcommittee Print which are applicable to the National Forest System lands. The major sections or titles applicable to the National Forest System are rights-of-way, exchange, sales, withdrawals, acquisition of land, and grazing authorities. We testified on March 21 regarding grazing authorities and will limit our comments to the other provisions today.

RIGHTS-OF-WAY

The Rights-of-way Title in the Administration's proposal and in the Subcommittee Print are generally similar. The authority for granting rights-of-way that would be provided in these titles for the Bureau of Land Management lands is now provided for National Forest System lands under a number of statutes administered by the Secretary of Agriculture, the Secretaries of the Interior and of Transportation, or the Chairman of Federal Power Commission. For the convenience of the Committee we have prepared a listing of these various authorities. We have generally found this present statutory base sufficient.

One problem area pertaining to oil and gas rights-of-way was removed by the enactment of the so called Alaska pipeline bill, Public Law 93-153.

The Rights-of-way Title in the Administration's proposed "National Resource Lands Management Act" could with a number of amendments provide the basis for a bill applicable to National Forest System lands. I will briefly outline several significant changes we believe would be necessary to adapt this authority to apply to National Forest System lands. One such change would be in the authority to require reimbursements to the United States for administrative and other costs. (Administration's Section 403(f) ; Subcommittee Print Section 504(f)). The basic authority for the Secretary of the Interior to require reimbursements for extraordinary costs is contained in Title III pertaining to general Bureau authorities (Administration's Section 302; Subcommittee Print Section 304) and then restated in the Rights-of-way Title. A combination of the basic authority with the specific authority to require reimbursements would be needed in any rights-of-way authority applicable to National Forest System lands.

Another change we would recommend in any new authority applicable to the National Forest System is in the section "Effect on other laws" where we recommend the retention of the National Forest Roads and Trails System Act (Act of October 13, 1964). This Act provides authority to grant easements, provides for the acquisition, construction, and maintenance of forest development roads, provides authority for financing road construction and maintenance of forest development roads, provides authority for financing road construction and maintenance, and provides authority to require users to maintain roads. This is the basic authority for National Forest roads and trails. The retention of this Act is provided for in the Subcommittee Print. Finally since the authority to issue rights-of-way on National Forest System lands is now provided in a number of separate Acts, any revision of this rights-of-way authority would need to identify appropriate Acts to be repealed.

SALES AUTHORITY

The principal authorities governing establishment and management of National Forest System lands contemplate and provide that these lands are to be held on a permanent basis, to provide a continuous flow of goods and services to the people of the United States. Needs for adjustment and updating National Forest boundaries are accommodated through our exchange authorities. These have generally served us well as a means to dispose of tracts where private or public developments on adjacent lands have made management for National Forest System purposes inefficient, or where other factors make exchange clearly in the public interest. Because any broad sale authority could lead to pressure for disposal of National Forest System lands, we have not sought any such authority. The only authority now available to the Secretary of Agriculture for sale of National Forest System lands is the Townsite Act (Act of July 31, 1958). This Act provides for areas up to 640 acres to be set aside and designated as a townsite upon application and demonstration of need by a local government. The Act provides for an area to be divided into town lots and offered for sale by the Secretary of Agriculture. This Act has not been used. We have not encouraged use of this Act because it would put the Secretary in the subdivision business. The Subcommittee Print in Section 203(j) would amend this Act to provide for disposal of a townsite area directly to a governmental entity at its appraised value and would allow the governmental entity to dispose of the land to private parties for development in accordance with local ordinances. This amendment would make the Townsite Act more useable.

With regard to sale authority, one of the expressed concerns of Committee members is the situation where communities are surrounded by public lands and where such ownership could have a limiting effect on community expansion. As a matter of actual practice, we have generally been able to resolve this problem through use of our general exchange authority. A similar concern relating to meeting the needs of public school districts led to a special exchange authority applicable to public school districts which is contained in the Act of December 4, 1967. This Act allows for exchange of land or, if the school authority has insufficient land to offer, the deposit with the Secretary of Agriculture of a portion or all of the value of the selected land. An alternative to amendment of the Townsite Act would be to broaden the public school district exchange authority to include communities.

EXCHANGE AUTHORITY

The basic exchange authorities applicable to National Forest System lands are contained in the General Exchange Act of March 20, 1922, the Weeks Act of March 1, 1911, and Act of October 23, 1962. Additional limited authority is contained in the Act of August 3, 1956, with regard to public school districts in the Act of December 4, 1967, and in certain special legislation such as that establishing the Sawtooth National Recreation Area. We have found these authorities sufficient and have not sought new authority. The major new general authority which is part of the proposed authority for the Bureau of Land Management is the provision for cash equalization in exchanges up to 20 percent of the total value of lands transferred out of Federal ownership. This authority is not included in our general exchange authority. Cash equalization is provided in certain special legislation such as that applicable to public school district exchanges. We would not object to a provision providing for cash equalization provided such authority was limited to 20 percent of the value of the lands exchanged. We believe such authority could most appropriately be provided to the Secretary of Agriculture as an amendment to our basic authorities and need not be included in a bill providing organic authority for the Bureau of Land Management.

WITHDRAWALS

The Administration's proposed "National Resource Lands Management Act" does not include major provisions pertaining to withdrawals. The statutory direction contained in the declaration of policy and requirements pertaining to land use plans and public participation were deemed to provide adequate direction for the development of rules and regulations regarding withdrawals. We support the Secretary of the Interior in not including statutory procedures for review of withdrawals. In addition, we have concerns regarding the definition of withdrawal as it would apply to National Forest System lands. Withdrawals of National Forest System lands are based solely on authorities of other Federal departments or agencies such as the Department of Defense, Federal Power Commission, or Department of the Interior. The only type withdrawals we regularly initiate involve relatively small areas on which we are seeking withdrawal from mineral entry under authority of the Secretary of the Interior.

The Secretary of Agriculture under his authority does designate special areas on National Forest System lands such as research natural areas or scenic areas, however, we do not view these designations as withdrawals from the general laws applicable to the National Forest System. We do not believe these designations should be treated as withdrawals.

ACQUISITION OF LANDS

In the Subcommittee Print, the Secretary of Agriculture would be authorized to acquire lands or interests in lands within units of the National Forest System. Present acquisition authority, provided under other Acts, would be retained. The Secretary of Agriculture now has authority to acquire lands under a number of separate Acts. Each of those Acts was tailored to meet a specific land management situation, and we agree that they should be retained. The authority which would be provided in the Subcommittee Print would broaden existing authority primarily by providing acquisition authority within National Grasslands. We would not object to a broadening of our acquisition authority, however, this could be provided as an amendment to our basic authority rather than as part of an Act providing the Bureau of Land Management organic authority.

This concludes my prepared statement. I will be happy to answer any questions you may have.

RIGHTS-OF-WAY AUTHORITY—APPLICABLE TO LANDS ADMINISTERED BY THE SECRETARY OF AGRICULTURE, MARCH 1975

I. Statutory Authority.—The following is a list of the statutes authorizing rights-of-way across lands administered by the Secretary of Agriculture.

A. Statutes administered by the Department of Agriculture:
the regulate occupancy and use of the National Forests.

1. Act of June 4, 1897 (30 Stat. 35), as amended; (16 U.S.C. 551)—authority Exhibit 1.

2. Act of February 15, 1901 (31 Stat. 790; 16 U.S.C. 522)—authority for rights-of-way for canals and ditches, dams, and reservoirs, electrical and water conduits, transmission, telephone, and telegraph lines.

3. Act of March 4, 1911 (36 Stat. 1253), as amended; (16 U.S.C. 523)—authority to grant easements for power and communications facilities.

4. Act of July 22, 1937 (50 Stat. 525), as amended; (7 U.S.C. 1010-1012)—authority to grant licenses and easements across Title III, Bankhead-Jones Farm Tenant Act lands.

5. Act of September 3, 1954 (68 Stat. 1146; 43 U.S.C. 931c)—authority to grant permits, leases, or easements upon payment of fair market value.

6. Act of July 7, 1960 (74 Stat. 363; 40 U.S.C. 345c)—authority to grant interests in real property to States for highway purposes.

7. Act of October 23, 1962 (76 Stat. 1129; 40 U.S.C. 319)—authority to grant easements over lands under Agriculture jurisdiction other than National Forest or Title III, Bankhead-Jones lands.

8. Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532-538)—authority to grant easements for road rights-of-way.

B. Statutes used to grant rights-of-way over lands administered by the Department of Agriculture:

1. Act of July 26, 1865 (14 Stat. 253; 43 U.S.C. 932)—grant of highway rights-of-way over public lands not reserved for public uses (administered by Department of the Interior).

2. Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934)—grant of railroad rights-of-way through public lands (administered by Department of the Interior).

3. Act of March 3, 1891 (26 Stat. 1101), as amended; (43 U.S.C. 946-949)—grant of rights-of-way to canal and ditch companies for irrigation and drainage purposes (administered by Department of the Interior).

4. Act of January 21, 1895 (28 Stat. 635; 43 U.S.C. 956)—authority for rights-of-way for tramroads for mining, quarrying, cutting and manufacturing timber (administered by Department of the Interior).

5. Act of May 11, 1898 (30 Stat. 404), as amended; (43 U.S.C. 951)—authority for rights-of-way for water transportation, domestic purposes, or development of power (administered by Department of the Interior).

6. Act of March 3, 1899 (30 Stat. 1233; 16 U.S.C. 525)—authority for rights-of-way for railroads and highways (administered by Department of the Interior); this Act made the Acts of March 3, 1875, and January 21, 1895, *supra*, applicable to the National Forests.

7. Act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 524)—grant of rights-of-way for dams, reservoirs or water plants, etc., for municipal and mining purposes (administered by Department of the Interior).

8. Act of February 25, 1920 (41 Stat. 449), as amended; (30 U.S.C. 185)—authority for rights-of-way for oil and natural gas pipelines. Further amended in the 93rd Congress by the Act of November 16, 1973 (Joint administration by the Department of the Interior or appropriate agency head).

9. Act of June 10, 1920 (41 Stat. 1063), as amended; (16 U.S.C. 796, *et seq.*)—authority for rights-of-way for primary hydroelectric transmission lines

10. Act of August 27, 1958 (72 Stat. 885), as amended; (23 U.S.C. 107d, (administered by Federal Power Commission).

317)—authority for highway rights-of-way (administered by Department of Transportation).

The statutes identified in A. 1, 2, 3, 5, 6, and 8, and B. 9 and 10 apply to acquired National Forest lands as well as public domain National Forest lands.

STATEMENT OF JOHN R. McGUIRE, CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. McGUIRE. We support the administration's proposal for a National Resource Lands Management Act. That proposal will not affect the authorities pertaining to the National Forest Service System lands.

We believe that existing authorities which have been built up over a period of many years generally have proved workable and flexible. Other than grazing, the major parts of the subcommittee's print

that apply to the National Forest System are rights-of-way, exchanges, sales, withdrawals, and acquisition of land.

I can either comment on each of those points or answer questions.

Mr. MELCHER. Well, I think answering questions may be the quickest way because, first of all, you have referred in your testimony to the statutes governing rights-of-way onto the entire forest system, am I right?

Mr. McGUIRE. That is correct.

Mr. MELCHER. I glanced through your testimony and I know you feel that with some adjustments, the title dealing with the rights-of-way in Subcommittee Print 1 could apply to the Forest System. If that was done, would you find it advantageous?

Mr. McGUIRE. I think it would probably make very little difference. There are some points to watch if you do that. One pertains to the authority to require reimbursements for administrative and other costs. Another point to watch is the retention of the National Forest Roads and Trails Systems Act.

If you repeat that then I think you would have to make other provisions.

Mr. MELCHER. You would want reimbursement?

Mr. McGUIRE. Yes. We think both the administration's bill and the subcommittee print deal with that.

Mr. MELCHER. Well, doesn't it make sense rather than having 10 different acts—maybe it is 18.

Mr. McGUIRE. It is 18, I think.

Mr. MELCHER. And they date back as far as 1897. Doesn't it make sense to put it all into one part of the law?

Mr. McGUIRE. Well, you will notice from the list that eight of these are administered by the Department of Agriculture and 10 by other departments or agencies. The problem arises because part of the national forest system consists of acquired lands, part of it consists of lands originating from the public domain and part consists of Bankhead-Jones lands, each of which is treated somewhat differently. A lot depends on how you handle the consolidation.

Mr. MELCHER. I think there is, in general, as I look at the second set of statutes, we find almost all of them are administered by the Department of Interior.

Mr. McGUIRE. That is right.

Mr. MELCHER. If we are going to instruct the Department of Interior what to do about rights of way on Bureau of Land Management matters, I think it falls in the pattern I thought was justified by this committee to apply the same rules to the Forest Service.

Mr. McGUIRE. I think if you do that it would be well to watch carefully the acts to be repealed so we don't get into trouble. One other point is the reference to the Wilderness Act. There are private holdings within the areas designated by the Wilderness Act.

Mr. MELCHER. That is a very valid point. I hope counsel is taking note of this. If I understand right, Chief, that in granting that, the Wilderness Act carries with it the rights of way to any holdings?

Mr. McGUIRE. The act specifically provides that private land owners and others have a right to access.

Mr. MELCHER. The access is there?

Mr. McGUIRE. Yes.

Mr. MELCHER. If we are going to write one title of rights of way we better note that we can't destroy that access or we have, in effect, amended the act of 1964, the Wilderness Act.

Mr. McGUIRE. Within the provision of 501(a); you might want to delete the reference to wilderness.

Mr. MELCHER. Can I assume there is general agreement that in these communities landlocked by a national forest there are occasions when sales of land should be permitted?

Mr. McGUIRE. That is correct, Mr. Chairman. We have discussed this with you before. We have called your attention to the Townsite Act. I think it might also be worthwhile to examine the act pertaining to school districts which takes somewhat of a different tack.

The problem with the Townsite Act as it stands now is that it puts the Secretary of Agriculture in the subdivision business. In other words, he does the subdividing and sells the lots. It would be better in our view if you go this way, to take the approach used under the School District Act, and at the same time, provide for deposit of monies from sales or receipts, in a special account for acquisition of substitute land in the same forest or State. You could then accomplish the objective of necessary land transfers we now can achieve through the existing authorities but with more flexibility.

Mr. MELCHER. Page 18 attempted to solve this problem. Your proposal, now you are telling me, would improve this? We would be pleased to review this.

As you know, this has been one of the points that we have gone one way and another on with the subcommittee. We would be delighted to review this improvement of that language.

Mr. McGUIRE. We would be glad to supply whatever you like.

Mr. MELCHER. I see from your testimony that the National Forest Service System lands, when they experience a withdrawal, you essentially deal with departments or agencies other than the Secretary of Agriculture?

Mr. McGUIRE. That is correct.

Mr. MELCHER. So, assuming they have a statutory authority for a withdrawal by the U.S. Forest Service, is that all satisfactory; have you found that their withdrawals have hurt the National Forest Service System?

Mr. McGUIRE. In general, the system has worked pretty well. Our concern here is with the definition of withdrawal. In the subcommittee print on page 9 there is a rather broad definition, if you will notice.

The term withdrawal means the exclusion of an area of public lands or of lands within the National Forest System, from management under principles of multiple use in order to protect or favor particular public values in the land, or a withholding of an area of such land from settlement, sale or entry under some or all of the general land laws.

We can see that a strict interpretation of this definition could involve many administrative actions by the Forest Service such as a fine closure and I am sure you didn't mean that, but that is one extreme. The only kinds of withdrawals that we request are those involving withdrawal from mineral entry. The present definition seems too broad.

Mr. MELCHER. Yes, very broad. We welcome your recommendations for language for that section. We labored with this quite a while last year, too, and we are not particularly satisfied that we have the proper definitions of that.

Mr. McGUIRE. You see, the Secretary of Agriculture sets up special interest areas such as historical, archeological, geological, botanical areas, and scenic areas. We would hope that that authority wouldn't be disturbed by the language in the subcommittee print if it were enacted.

Mr. MELCHER. Well, again, if the final version of the committee's bill is such, and the House accepts it, it will be a prerogative of the Congress to review decisions by the Secretary, meaning both the Secretary of the Interior and the Secretary of Agriculture, in changing the use of public lands including the National Forests—that is, of some acreage in excess of 5,000 acres, or some other amount of acreage set by the House. If Congress uses its prerogative to review some of these changes in management as requested by the Department, I feel we might run into a confrontation that is unnecessary.

I don't believe you or the Secretary of Agriculture really object to the Congress reviewing these, I think you just object to the methods we set up to do the review.

Mr. McGUIRE. I think that is correct. Looking at the mineral withdrawals in calendar year 1974, we had only 19, and all but one were less than 5,000 acres.

Mr. MELCHER. Again, as I urged Secretary Horton on behalf of the Interior, I urge you, Chief McGuire, on behalf of Agriculture, to put your draftsmen and counsel to work on this particular question so we can come up with a language that does preserve the prerogative of the Congress to make the review but doesn't in turn create such a burden on Agriculture to property administer the lands.

Above all, we seek not to prevent you from exercising prudent judgment quickly to avoid damage to the land in case of an emergency that might occur, even though subsequent to the use of the emergency power, the Congress still might want to review that particular withdrawal or a particular change in management.

Mr. McGUIRE. We will be glad to work with you and we will consult with the Department of the Interior.

Mr. SANTINI. I have no questions.

Mr. MELCHER. Well, I am encouraged, Chief McGuire, by your statement today and your answers to our questions. I think we are a great deal closer on the thrust of this bill as it affects the National System than we were a year ago when we met in this same room and you had to make rather extensive objections to several points the Committee was considering in the will be had before us then.

However, as you well know, I believe the committee has retreated a long way in subcommittee print No. 1 from the position we were proposing a year ago at this time in regards to the Forest Service. If we can come up with some language as to sales, withdrawals, rights-of-way, and grazing, I think we will have covered the main points the subcommittee is interested in combining into this bill.

Mr. McGUIRE. I am sure a lot of progress has been made since last year. It has been a very useful exercise for us in forcing us to look at our basic authorities.

Thank you.

Mr. MELCHER. Thank you. We will now adjourn, subject to the call of the Chair.

[Whereupon, at 12:10 p.m., the subcommittee recessed, subject to the call of the Chair.]

PUBLIC LAND POLICY AND MANAGEMENT ACT OF 1975

MONDAY, APRIL 7, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC LANDS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:45 a.m. in room 1324, Longworth House Office Building, Hon. John Melcher (chairman of the subcommittee) presiding.

Mr. MELCHER. The Subcommittee on Public Lands will come to order. We will continue our public hearings on H.R. 5224, which is the administration bill to provide for the management, protection, and development of national resource lands. We are also considering Subcommittee Print No. 1 of March 18 of this year, which is the Public Land Policy and Management Act of 1975, and which is a continuation of the consideration we gave the last Congress and H.R. 5622 introduced by Mr. Seiberling. In this Congress we want to put out a bill.

H.R. 5224 and Subcommittee Print No. 1, have already been inserted into the record and at this time I would like to place H.R. 5622 into the record.

[H.R. 5622 follows:]

(253)

94TH CONGRESS
1ST SESSION

H. R. 5622

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 1975

Mr. SEIBERLING introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To provide for the management, protection, and development of the national resource lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That this Act may be cited as the "National Resource
 4 Lands Organic Act".

5 SEC. 2. FINDINGS AND DECLARATION OF POLICY.—

6 (a) The Congress finds that—

7 (1) the national resource lands are a vital national
 8 asset, encompassing more than one-fifth of the Nation's
 9 land area and containing a diversity of natural resource
 10 values, including soil, water, air, plants, animals, and

I

1 intangible values; these lands are important to the Nation
2 as a source of economic and environmental benefits, raw
3 materials, recreation, watershed and wildlife values;
4 consequently the national resource lands deserve the
5 highest quality of management, under conservation prin-
6 ciples, to assure these benefits and values to the people
7 of the United States of present and future generations;

8 (2) the present condition of the national resource
9 lands is such that the public benefits and values are dete-
10 riorating because of inadequate management of the
11 land; indicative of the degree of deterioration is the cur-
12 rent report from the Department of the Interior that 83
13 percent of the rangeland is in fair, poor, or bad condition,
14 and that the condition is improving on only 19 percent
15 of the land;

16 (3) the present inadequacy of management is a
17 result of prior statutory policies which are variously
18 unclear, outdated, and at cross purposes, and a result
19 of insufficient personnel and funding levels;

20 (4) clear and consistent policy directions are needed
21 to govern the management of the national resource lands
22 in the long-term public interest, so as to arrest the pres-
23 ent deterioration, and to provide for protection of natural
24 values, management under conservation principles, and
25 restoration of the renewable resources and values; and

1 (5) to facilitate proper and effective management,
2 a system of identified and designated units of the na-
3 tional resource lands is needed.

4 (b) Therefore, the Congress declares that—

5 (1) the national resource lands shall be administered
6 as the National Resource Lands System;

7 (2) the national resource lands shall be retained
8 in Federal ownership, except in limited cases where
9 there is an overriding public need for disposal of a
10 particular tract, or where disposal is necessary for
11 proper management of Federal lands;

12 (3) the national resource lands shall be adminis-
13 tered, used, restored, improved, and protected: (A) to
14 maintain the integrity of ecosystems and environmental
15 quality, including the protection of natural, scientific,
16 scenic, historic, and archeological values, to protect
17 watersheds, to provide habitat for fish and wildlife, to
18 preserve wilderness and wild and scenic rivers, and to
19 afford opportunity for outdoor recreation, including
20 necessary access; and (B) to permit appropriate eco-
21 nomic uses under the principles of multiple use and
22 sustained yield, including the production of forage, min-
23 erals, and timber, and to allow desirable forms of
24 occupancy;

25 (4) the national resource lands and their resources

1 shall be periodically and systematically inventoried, and
2 a long-range plan for their present and future manage-
3 ment and use shall be prepared through a land-use plan-
4 ning process coordinated with other Federal and State
5 planning efforts; and

6 (5) the Secretary shall manage the national
7 resource lands under principles of multiple use and sus-
8 tained yield in a manner which will, using all practicable
9 means and measures: (A) protect and enhance the
10 environmental quality of such lands to assure their con-
11 tinued value for present and future generations; (B)
12 include, but not necessarily be limited to, such uses as
13 provision of food and habitat for wildlife, fish and
14 domestic animals, minerals and materials production,
15 supplying the products of trees and plants, human
16 occupancy and use, and various forms of outdoor recrea-
17 tion; (C) preserve scientific, scenic, historical, archeo-
18 logical, natural ecological, air and atmospheric, water
19 resource, and other public values; (D) include certain
20 areas in their natural condition; (E) balance various
21 demands on such lands consistent with national goals;
22 (F) assure payment of fair market value by users of
23 such lands; and (G) provide maximum opportunity for
24 the public to participate in decisionmaking concerning
25 such lands.

5

1 SEC. 3. DEFINITIONS.—As used in this Act:

2 (a) “The Secretary” means the Secretary of the In-
3 terior.

4 (b) “National resource lands” means all lands and in-
5 terests in lands (including the renewable and nonrenewable
6 resources thereof) now or hereafter administered by the
7 Secretary through the Bureau of Land Management, except
8 the Outer Continental Shelf.

9 (c) “Multiple use” means the management of the na-
10 tional resource lands and their various resource values so
11 that they are utilized in the combination that will best meet
12 the present and future needs of the American people; making
13 the most judicious use of the land for some or all of these
14 resources or related services over areas large enough to pro-
15 vide sufficient latitude for periodic adjustments in use to
16 conform to changing needs and conditions; the use of some
17 land for less than all of the resources; a combination of bal-
18 anced and diverse resource uses that takes into account the
19 long-term needs of future generations for renewable and non-
20 renewable resources, including recreation and scenic values;
21 and harmonious and coordinated management of the various
22 resources without impairment of the productivity of the land
23 and the quality of the environment, with consideration being
24 given to the relative values of the resources and not neces-

1 sarily to the combination of uses that will give the greatest
2 economic return or the greatest unit output.

3 (d) "Sustained yield" means the achievement and
4 maintenance in perpetuity of a high-level annual or regular
5 periodic output of the various renewable resources of land
6 without impairment of the quality and productivity of the
7 land or its environmental values.

8 (e) "Areas of critical environmental concern" means
9 areas within the national resource lands where special man-
10 agement attention is required when such areas are developed
11 or used to protect, or where no development is required to
12 prevent irreparable damage to, important historic, cultural,
13 or scenic values, or natural systems or processes, or life and
14 safety as a result of natural hazards.

15 (f) "Right-of-way" means an easement, lease, permit,
16 or license to occupy, use, or traverse national resource lands
17 granted for the purposes listed in title IV of this Act.

18 (g) "Holder" means any State or local governmental
19 entity or agency, individual, partnership, corporation, asso-
20 ciation, or other business entity receiving or using a right-
21 of-way under title IV of this Act.

22 SEC. 4. RULES AND REGULATIONS.—The Secretary
23 is authorized to promulgate such rules and regulations as he
24 deems necessary to carry out the purposes of this Act. The
25 promulgation of such rules and regulations shall be governed

1 by the Administrative Procedure Act (60 Stat. 237), as
2 amended. Prior to the promulgation of such rules and regula-
3 tions, the national resources lands shall be administered under
4 existing rules and regulations concerning such lands.

5 SEC. 5. PUBLIC PARTICIPATION.—In exercising his
6 authorities under this Act, the Secretary, by regulation, shall
7 establish procedures, including public hearings where appro-
8 priate, to give the Federal, State, and local governments and
9 the public adequate notice and an opportunity to comment
10 upon the formulation of standards and criteria for the prepa-
11 ration and execution of plans and programs concerning, and
12 to comment on the planning and management of, the na-
13 tional resource lands, and to participate in formulation of
14 plans and management programs.

15 SEC. 6. ADVISORY BOARDS AND COMMITTEES.—In pro-
16 viding for public participation in planning and programing
17 for the national resource lands, the Secretary, pursuant to
18 the Federal Advisory Committee Act (86 Stat. 770) and
19 other applicable law, may establish and consult such advisory
20 boards and committees as he deems necessary to secure full
21 information and advice on the execution of his responsibili-
22 ties. Each member of such boards and committees shall have
23 expertise in some natural resource management or environ-
24 mental field, and the membership of such boards and com-
25 mittees as a whole shall be representative of local, regional,

1 and national interests in the protection, management, use,
2 and enjoyment of the national resource lands.

3 SEC. 7. ANNUAL REPORT.—The Secretary shall pre-
4 pare an annual report which he shall make available to the
5 public and submit to Congress no later than 120 days after
6 the close of each fiscal year. The report shall describe, in
7 appropriate detail, activities relating or pursuant to this Act
8 for the fiscal year just ended, any problems which may have
9 arisen concerning such activities, and other pertinent infor-
10 mation which will assist the accomplishment of the provisions
11 and purposes of this Act. The report shall contain a detailed
12 list and description of any and all transfers of national re-
13 source lands out of Federal ownership for the fiscal year just
14 ended. It shall include such tables, graphs, and illustrations
15 as will adequately reflect the fiscal year's activities, historical
16 trends, and future projections relating to the national re-
17 source lands.

18 SEC. 8. DIRECTOR.—Appointments made on or after the
19 date of the enactment of this Act to the position of the Direc-
20 tor of the Bureau of Land Management, within the Depart-
21 ment of the Interior, shall be made by the President, by and
22 with the advice and consent of the Senate. The Director
23 shall have a broad background and experience in public land
24 and natural resource management.

25 SEC. 9. APPROPRIATIONS.—There is hereby authorized

9

1 to be appropriated such sums as are necessary to carry out
2 the purposes and provisions of this Act.

3 TITLE I—GENERAL MANAGEMENT

4 AUTHORITY

5 SEC. 101. MANAGEMENT.—The Secretary shall manage
6 the national resource lands in accordance with the policies
7 and procedures of this Act and with any land use plans
8 which he has prepared, pursuant to section 104 of this Act,
9 except to the extent that other applicable law provides other-
10 wise. Such management shall include—

11 (1) regulating, through permits, licenses, leases, or
12 such other instruments as the Secretary deems appropri-
13 ate, the use, occupancy, or development of the national
14 resource lands not provided for by other laws: *Provided,*
15 *however,* That no provision of this Act shall be construed
16 as authorizing the Secretary to require any Federal per-
17 mit to hunt or fish on the national resource lands;

18 (2) requiring appropriate land reclamation as a
19 condition of use, and requiring performance bonds or
20 other security guaranteeing such reclamation in a timely
21 manner from any person permitted to engage in an ex-
22 tractive or other activity likely to entail significant dis-
23 turbance to or alteration of the national resource lands;

24 (3) inserting in permits, licenses, leases, or other

1 authorizations to use, occupy, or develop the national
2 resource lands, provisions authorizing revocation or sus-
3 pension, after notice and hearing, of such permits, li-
4 censes, leases, or other authorizations, upon final ad-
5 ministrative finding of a violation of any regulations
6 issued by the Secretary under any Act applicable to the
7 national resource lands or upon final administrative find-
8 ing of a violation on such lands of any applicable State
9 or Federal air or water quality standard or implemen-
10 tation plan: *Provided*, That the Secretary may order an
11 immediate temporary suspension prior to a hearing or
12 final administrative finding if he determines that such
13 a suspension is necessary to protect public health or safety
14 or the environment: *Provided further*, That, where
15 other applicable law contains specific provisions for
16 suspension, revocation, or cancellation of a permit, li-
17 cense, or other authorization to use, occupy, or develop
18 the national resource lands, the specific provisions of
19 such law shall prevail; and

20 (4) the prompt development of regulations for the
21 protection of areas of critical environmental concern.

22 SEC. 102. INVENTORY.—(a) The Secretary shall pre-
23 pare and maintain on a continuing basis an inventory of all
24 national resource lands, and their resource and other values
25 (including esthetic, recreational and ecological values)

1 giving priority to areas of critical environmental concern.
2 The inventory shall be kept current so as to reflect changes
3 in conditions and in identifications of resource and other
4 values.

5 (b) The Secretary shall identify local units of the na-
6 tional resource lands for easy reference by the public, and
7 provide maps and where he deems appropriate signs; and
8 he shall designate approximate boundaries for each such unit
9 and name the unit appropriately. The Secretary, where he
10 determines it to be appropriate, shall provide State and local
11 governments with data from the inventory for the purpose
12 of planning and regulating the uses of non-Federal lands in
13 the proximity of national resource lands.

14 SEC. 103. WILDERNESS STUDY.—The Secretary shall
15 review those roadless areas of five thousand contiguous acres
16 or more and roadless islands of the public lands administered
17 by him through the Bureau, and shall report to the Presi-
18 dent his recommendation on the suitability or unsuitability
19 of each such area or island for preservation as wilderness.
20 The review conducted by the Secretary shall be made ac-
21 cording to the procedure specified in section 3 (c) and 3 (d)
22 and section 4 (d) (2) (with respect to mineral surveys) of
23 the Wilderness Act. The recommendations of the Secretary
24 based on the review conducted by him under this section
25 shall be submitted to the President from time to time. The

1 President shall advise the President of the Senate and the
2 Speaker of the House of Representatives of his recommenda-
3 tions with respect to the designation as wilderness of each
4 such area on which review has been completed, together with
5 a map thereof and a definition of its boundaries. Such advice
6 by the President shall be given with respect to not less
7 than one-half of all the areas within five years after the date
8 of enactment of this Act, and the remaining areas within ten
9 years after the date of enactment of this Act. A recommenda-
10 tion of the President for designation as wilderness shall
11 become effective only if so provided by an Act of Congress.
12 During the period of review of such areas, the Secretary shall
13 continue to administer such lands according to his existing
14 authority in a manner so as to preserve the wilderness char-
15 acter of each such area. The conduct of the review under this
16 section shall not, of itself, prohibit existing uses to continue
17 in such areas during the period of review so long as such uses
18 do not substantially impair the suitability of such area for
19 preservation as wilderness. Once an area has been designated
20 for preservation as wilderness, the provisions of the Wilder-
21 ness Act shall apply with respect to the administration and
22 use of such designated area.

23 SEC. 104. LAND USE PLANS.—(a) The Secretary shall,
24 with public participation, develop, maintain, and, when
25 appropriate, revise land use plans for the national resource

1 lands consistent with terms and conditions of this Act and
2 coordinated so far as he finds feasible and proper, or as may
3 be required by the enactment of a national land use policy or
4 other law, with the land use plans, including the statewide
5 outdoor recreation plans developed under the Act of Sep-
6 tember 3, 1964 (78 Stat. 897), and the comprehensive plan-
7 ning assistance of section 701 of the Housing Act of 1954 as
8 amended (68 Stat. 640; 40 U.S.C. 461), of State and local
9 governments and other Federal agencies.

10 (b) In the development and maintenance of land use
11 plans, the Secretary shall:

12 (1) use a systematic interdisciplinary approach to
13 achieve integrated consideration of physical, biological,
14 economic, and social sciences;

15 (2) give priority to the designation and protec-
16 tion of areas of critical environmental concern;

17 (3) rely, to the extent it is available, on the inven-
18 tory of the national resource lands, their resources, and
19 other values;

20 (4) consider present and potential uses of the
21 lands;

22 (5) consider the relative scarcity of the values in-
23 volved and the availability of alternative means (in-
24 cluding recycling) and sites for realization of those
25 values;

1 (6) weigh long-term public benefits; and

2 (7) consider the requirements of applicable pollu-
3 tion control laws including State or Federal air or water
4 quality standards, noise standards, and implementation
5 plans.

6 (c) Any classification of national resource lands in effect
7 on the date of enactment of this Act is subject to review in
8 the land use planning process and such lands are subject to
9 inclusion in land use plans pursuant to this section.

10 (d) Wherever any proposed change in the classification
11 of, or permitted uses on, any national resource lands would
12 affect authorization of such lands, persons holding leases,
13 licenses, or permits concerning the use to be affected shall be
14 given written notice by the Secretary of such proposed
15 change at least sixty days before it is put into effect. In
16 addition, the Secretary shall give public notice, including
17 publication in the Federal Register, of any proposed change
18 in classification for any tract over one thousand two hundred
19 and eighty acres and hold a public hearing with at least
20 forty-five days' notice on the proposed change, which shall
21 not take effect until at least thirty days after such hearing.

22 SEC. 15. RECORDATION OF MINING CLAIMS.—(a)
23 Each mining claim under the Mining Law of 1872, as
24 amended (Revised Statutes 2318-2352), shall be recorded
25 by the claimant with the Secretary within two years after

15

1 the date of enactment of this Act or within thirty days of
2 location of the claim, whichever is later. Any claim not
3 so recorded shall be conclusively presumed to be abandoned
4 and shall be void.

5 (b) Any claim recorded pursuant to subsection (a) for
6 which the claimant has not made application for a patent
7 within five years after the date of enactment of this Act or
8 the date of location of a claim, whichever is later, shall be
9 conclusively presumed to be abandoned and shall be void.

10 (c) Such recordation or application shall not render
11 valid any claim which was not valid on the date of enact-
12 ment of this Act, or which becomes invalid thereafter.

13 TITLE II—CONVEYANCE AND ACQUISITION
14 AUTHORITIES

15 SEC. 201. AUTHORITY TO SELL.—Except as otherwise
16 provided by law, and subject to the requirements of section
17 2 (b) of this Act, the Secretary is authorized to sell national
18 resource lands. The national resource lands may be sold
19 if the Secretary, in accordance with the guidelines he has
20 established for sale of national resource lands and after
21 preparation pursuant to section 104 of this Act of a land use
22 plan which includes any tract of such lands identified for
23 sale, determines that the sale of such tract will not cause
24 needless degradation of the environment and meets the sale
25 criteria of section 202 of this Act.

1 **SEC. 202. SALE CRITERIA.**—(a) A tract of national
2 resource lands may be sold under this Act only where, as a
3 result of land use planning required under section 104, the
4 Secretary determines that—

5 (1) such tract of national resource lands, because
6 of its location and other characteristics, is difficult to
7 manage as part of the national resource lands, and there-
8 fore not suitable to be managed as part of the national
9 resource lands, and is not suitable for management by
10 another Federal agency; or

11 (2) such tract of national resource lands was ac-
12 quired for a specific purpose and the tract is no longer
13 required for that or any other Federal purpose; or

14 (3) sale of such tract of national resource lands is
15 required for the orderly growth and development of
16 existing communities and if the purpose cannot be
17 achieved prudently or feasibly on land other than such
18 tract and which outweigh all public objectives and values
19 which would be served by maintaining such tract in Fed-
20 eral ownership.

21 **SEC. 203. SALES AT FAIR MARKET VALUE.**—Sales of
22 national resource lands under this Act shall be at not less
23 than appraised fair market value as determined by the
24 Secretary.

25 **SEC. 204. SIZE OF TRACTS.**—The Secretary shall deter-

1 mine and establish the size of tracts of national resource lands
2 to be sold on the basis of the land use capabilities and devel-
3 opment requirements of the lands.

4 SEC. 205. COMPETITIVE BIDDING PROCEDURES.—Ex-
5 cept as to sales under section 208 hereof, sales of national
6 resource lands under this Act shall be conducted under com-
7 petitive bidding procedures to be established by the Secretary.
8 However, where the Secretary determines it necessary to as-
9 sure proper land management for protection of environ-
10 mental values, he is authorized to sell national resource lands
11 with modified competitive bidding or without competitive
12 bidding.

13 SEC. 206. RIGHT TO REFUSE OR REJECT OFFER OF
14 PURCHASE.—Until the Secretary has accepted an offer to
15 purchase, he may refuse to accept any offer or may withdraw
16 any land or interest in land from sale under this Act when he
17 determines that consummation of the sale would not be con-
18 sistent with this Act or other applicable law. The Secretary
19 shall accept or reject, in writing, any offer to purchase made
20 through competitive bid at his invitation no later than thirty
21 days after the submission of such offer.

22 SEC. 207. RESERVATION OF MINERAL INTERESTS.—
23 All conveyances of title issued by the Secretary under this
24 Act, except conveyances under the exchange authority pro-

1 vided in section 213, shall reserve to the United States all
2 minerals in the lands, together with the right to prospect for,
3 mine, and remove the minerals under applicable law and
4 such regulations as the Secretary may prescribe: *Provided*,
5 That, where reservation of the mineral interests to the United
6 States would interfere with or preclude the appropriate use
7 or development of such land for the purposes for which it
8 was conveyed, the Secretary may convey the minerals in
9 the conveyance of title in accordance with the provisions of
10 section 208 (a) (1) and (2) and (c) of this Act.

11 SEC. 208. CONVEYANCE OF RESERVED MINERAL IN-
12 TERESTS.—(a) The Secretary may convey mineral interests
13 owned by the United States where the surface is in non-
14 Federal ownership, regardless of which Federal agency may
15 have administered the surface, if he finds (1) that there are
16 no mineral values in the land, or (2) that the reservation of
17 the mineral rights in the United States is interfering with or
18 precluding appropriate nonmineral development of the land
19 and that such development is a more beneficial use of the
20 land than mineral development.

21 (b) Conveyance of mineral interests pursuant to this
22 section shall be made only to the record owner of the surface
23 upon payment of administrative costs and the fair market
24 value of the interests being conveyed.

25 (c) The patent for any mineral interests conveyed pur-

1 suant to this section shall provide that, in the event that
2 mineral development activities are initiated within fifty
3 years of the issuance of such patent, the mineral interests
4 of the owner or owners of the parcel of land on which such
5 activities are initiated, together with the right to prospect
6 for, mine, and remove the minerals under applicable law
7 and such regulations as the Secretary may prescribe, shall
8 revert to the United States.

9 (d) Before considering an application for conveyance
10 of mineral interests pursuant to this section—

11 (1) the Secretary shall require the deposit of a
12 sum of money which he deems sufficient to cover ad-
13 ministrative costs including, but not limited to, costs of
14 conducting an exploratory program to determine the
15 character of the mineral deposits in the land, evaluating
16 the data obtained under the exploratory program to
17 determine the fair market value of the mineral interests
18 to be conveyed, and preparing and issuing the docu-
19 ments of conveyance: *Provided*, That, if the adminis-
20 trative costs exceed the deposit, the applicant shall pay
21 the outstanding amount; and, if the deposit exceeds the
22 administrative costs, the applicant shall be given a
23 credit for or refund of the excess; or

24 (2) the applicant shall have conducted, and sub-
25 mitted to the Secretary the results of, such an explora-

1 tory program, in accordance with standards promulgated
2 by the Secretary.

3 (e) Moneys paid to the Secretary for administrative
4 costs pursuant to subsection (d) of this section shall be paid
5 to the agency which rendered the service and deposited to
6 the appropriation then current.

7 SEC. 209. TERMS OF PATENT.—The Secretary shall in-
8 sert in any patent or other document of conveyance he issues
9 under this Act such terms, covenants, conditions, and reser-
10 vations as he deems necessary to insure proper land use and
11 protection of the public interest.

12 SEC. 210. CONFORMING CONVEYANCES TO STATE AND
13 LOCAL PLANNING.—The Secretary shall not make convey-
14 ances of national resource lands under this Act which would
15 be in conflict with State and local land use plans, programs,
16 zoning, and regulations. At least ninety days prior to offering
17 for sale or otherwise conveying national resource lands under
18 this Act, the Secretary shall notify the Governor of the State
19 within which such lands are located and the head of the gov-
20 erning body of any political subdivision of the State having
21 zoning or other land use regulatory jurisdiction in the geo-
22 graphical area within which such lands are located, in order
23 to afford the appropriate body the opportunity to zone or
24 otherwise regulate, or change or amend existing zoning or

1 other regulations concerning, the use of such lands prior to
2 such conveyance.

3 SEC. 211. AUTHORITY TO ISSUE AND CORRECT DOCU-
4 MENTS OF CONVEYANCE.—Consistent with his authority to
5 dispose of national resource lands, the Secretary is authorized
6 to issue deeds, patents, and other indicia of title, and to cor-
7 rect such documents where necessary. In addition, the Sec-
8 retary is authorized to make corrections on any documents of
9 conveyance which have heretofore been issued on lands
10 which would, at the time of their conveyance, have met the
11 description of national resource lands.

12 SEC. 212. RECORDABLE DISCLAIMERS OF INTEREST IN
13 LAND.—(a) After consulting with any affected Federal
14 agency, the Secretary is authorized to issue a document of
15 disclaimer of interest or interests in any lands in any form
16 suitable for recordation, where the disclaimer will help re-
17 move a cloud on the title of such lands and where he deter-
18 mines (1) a record interest of the United States in lands has
19 terminated by operation of law; or (2) the lands lying be-
20 tween the meander line shown on a plat of survey approved
21 by the Bureau of Land Management or its predecessors and
22 the actual shoreline of a body of water are not lands of the
23 United States; or (3) accreted, relicted, or avulsed lands
24 are not lands of the United States.

1 (b) No document of disclaimer shall be issued pursuant
2 to this title unless the applicant therefor has filed with the
3 Secretary an application in writing and notice of such appli-
4 cation setting forth the grounds supporting such application
5 has been published in the Federal Register at least ninety
6 days preceding the issuance of such disclaimer and until the
7 applicant therefor has paid to the Secretary the administra-
8 tive costs of issuing the disclaimer as determined by the
9 Secretary. All receipts shall be credited to the appropriation
10 from which expended.

11 (c) Issuance of a document of disclaimer by the Secre-
12 tary pursuant to the provisions of this section and regulations
13 promulgated hereunder shall have the same effect as quit-
14 claim deed from the United States.

15 SEC. 213. ACQUISITION OF LAND.—(a) The Secretary
16 is authorized to acquire, by purchase, exchange, or donation,
17 lands or interests therein where necessary for proper man-
18 agement of the national resource lands: *Provided*, That land
19 or interests in land may be acquired pursuant to this title by
20 eminent domain only within the boundaries of national re-
21 source lands units established pursuant to section 102 (b) or
22 if necessary in order to secure access to national resource
23 lands.

24 (b) Acquisitions pursuant to this Act shall be consist-
25 ent with applicable land use plans prepared by the Secre-
26 tary under section 104 of this Act.

1 (c) In exercising the exchange authority granted by
2 subsection (a) of this section, the Secretary may accept title
3 to any non-Federal land or interests therein and in exchange
4 therefor he may convey to the grantor of such land or inter-
5 ests any national resource lands or interests therein which,
6 under section 202 of this Act, he finds proper for transfer out
7 of Federal ownership and which are located in the same State
8 as the non-Federal land to be acquired. The values of the land
9 so exchanged either shall be equal, or if they are not equal,
10 shall be equalized by the payment of money to the grantor or
11 to the Secretary as the circumstances require.

12 (d) Lands acquired by exchange under this section or
13 section 301 (c) which are within the boundaries of the
14 national forest system may be transferred to the Secretary
15 of Agriculture for administration as part of, and in accord-
16 ance with laws, rules, and regulations applicable to, the
17 national forest system. Such transfer shall not result in the
18 reduction in the percentage of in-lieu payments receivable by
19 State and local governments. Lands acquired by exchange
20 under this section or section 301 (c) which are within the
21 boundaries of national park, wildlife refuge, wild and scenic
22 rivers, trails, or any other system established by Act of
23 Congress may be transferred to the appropriate agency head
24 for administration as part of, and in accordance with the
25 laws, rules, and regulations applicable to, such system.

10 **TITLE III—MANAGEMENT IMPLEMENTING**
11 **AUTHORITY**

(b) The Secretary may enter into contracts or cooperative agreements involving the management, protection, development, acquisition, and conveying of the national resource lands.

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1 the acquisition of rights-of-way for such purposes. He may
2 accept contributions for cadastral surveying performed
3 on federally controlled or intermingled lands. Moneys
4 received hereunder shall be credited to a separate account in
5 the Treasury and are hereby appropriated and made available
6 until expended, as the Secretary may direct, for payment of
7 expenses incident to the function toward the administration
8 of which the contributions were made and for refunds to de-
9 positors of amounts contributed by them in specific instances
10 where contributions are in excess of their share of the cost.

11 SEC. 302. SERVICE CHARGES, REIMBURSEMENT PAY-
12 MENTS, AND EXCESS PAYMENTS.—(a) Notwithstanding
13 any other provision of law, the Secretary may establish fil-
14 ing fees, service fees and charges, and commissions with
15 respect to applications and other documents relating to na-
16 tional resource lands and may change and abolish such fees,
17 charges, and commissions.

18 (b) The Secretary is authorized to require a deposit of
19 any payments intended to reimburse the United States for
20 extraordinary costs with respect to applications and other
21 documents relating to national resource lands. The moneys
22 received for extraordinary costs under this subsection
23 shall be deposited with the Treasury in a special account and
24 are hereby appropriated and made available until expended.

1 As used in this subsection, "extraordinary costs" include but
2 are not limited to the costs of special studies; environmental
3 impact statements; monitoring construction, operation, main-
4 tenance, and termination of any authorized facility; or other
5 special activities.

6 (c) In any case where it shall appear to the satisfaction
7 of the Secretary that any person has made a payment under
8 any statute relating to the sale, lease, use, or other disposi-
9 tion of the national resource lands which is not required or is
10 in excess of the amount required by applicable law and the
11 regulations issued by the Secretary, the Secretary, upon ap-
12 plication or otherwise, may cause a refund to be made from
13 applicable funds.

14 SEC. 303. WORKING CAPITAL FUND.—(a) There is
15 hereby established a working capital fund for the manage-
16 ment of national resource lands. This fund shall be available
17 without fiscal year limitation for expenses necessary for fur-
18 nishing, in accordance with the Federal Property and Ad-
19 ministrative Services Act of 1949 (63 Stat. 377), as
20 amended, and regulations promulgated thereunder, supplies
21 and equipment services in support of Bureau of Land Man-
22 agement programs, including but not limited to, the purchase
23 or construction of storage facilities, equipment yards, and
24 related improvements and the purchase, lease, or rent of
25 motor vehicles, aircraft, heavy equipment, and fire control

1 and other resource management equipment within the limi-
2 tations set forth in appropriations made to the Bureau of
3 Land Management.

4 (b) The initial capital of the fund shall consist of ap-
5 propriations made for that purpose together with the fair
6 and reasonable value at the fund's inception of the inven-
7 tories, equipment, receivables, and other assets, less the lia-
8 bilities, transferred to the fund. The Secretary is authorized
9 to make such subsequent transfers to the fund as he deems
10 appropriate in connection with the functions to be carried on
11 through the fund.

12 (c) The fund shall be credited with payments from
13 appropriations and funds of the Bureau of Land Manage-
14 ment, other agencies of the Department of the Interior,
15 other Federal agencies, and other sources, as authorized by
16 law, at rates approximately equal to the cost of furnishing
17 the facilities, supplies, equipment, and services (including
18 depreciation and accrued annual leave). Such payments may
19 be made in advance in connection with firm orders, or by
20 way of reimbursement.

21 (d) There is hereby authorized to be appropriated not
22 to exceed \$3,000,000 as initial capital of the working capital
23 fund.

24 SEC. 304. DEPOSITS AND FORFEITURES,—(a) Any
25 moneys received by the United States as a result of the for-

1 feiture of a bond or other security by a resource developer or
2 purchaser or permittee who does not fulfill the requirements
3 of his contract or permit or does not comply with the regula-
4 tions of the Secretary, or as a result of a compromise or
5 settlement of any claim whether sounding in tort or in con-
6 tract involving present or potential damage to national re-
7 source lands shall be credited to a separate account in the
8 Treasury and are hereby appropriated and made available,
9 until expended as the Secretary may direct, to cover the cost
10 to the United States of any improvement, protection, or re-
11 habilitation work on the national resource lands which has
12 been rendered necessary by the action which has led to the
13 forfeiture, compromise, or settlement.

14 (b) The Secretary may require a user or users of roads,
15 trails, lands, or facilities under the jurisdiction of the Bureau
16 of Land Management to maintain such roads, trails, lands,
17 or facilities in a satisfactory condition commensurate with
18 the particular use requirements and the use made by each,
19 the extent of such maintenance to be shared by the users in
20 proportion to such use or, if such maintenance cannot be so
21 provided, to deposit sufficient money to enable the Secretary
22 to provide such maintenance. Such deposits shall be credited
23 to a separate account in the Treasury and are hereby appro-
24 priated and made available until expended, as the Secretary
25 may direct, to cover the cost to the United States of the main-

1 tenance of any road, trail, lands, or facility under the juris-
2 diction of the Bureau of Land Management: *Provided, That*
3 nothing in this subsection shall be construed to require the
4 user or users to provide maintenance or deposits to repair
5 any damages attributable to general public use rather than
6 the specific use or uses of such user or users.

7 (c) Any moneys collected under this Act in connection
8 with lands administered under the Act of August 28, 1937
9 (50 Stat. 874), as amended, shall be expended for the
10 benefit of such land only.

11 (d) If any portion of a deposit or amount forfeited
12 under this Act is found by the Secretary to be in excess of the
13 cost of doing the work authorized under this Act, the amount
14 in excess shall be transferred to miscellaneous receipts.

15 SEC. 305. CONTRACTS FOR CADASTRAL SURVEY OPER-
16 ATIONS AND RESOURCE PROTECTION.—(a) The Secretary
17 is authorized to enter into contracts for the use of aircraft,
18 and for supplies and services, prior to the passage of an
19 appropriation therefor, for airborne cadastral survey and
20 resource protection operations of the Bureau of Land Man-
21 agement. He may renew such contracts annually, not more
22 than twice, without additional competition. Such contracts
23 shall obligate funds for the fiscal years in which the costs
24 are incurred.

25 (b) Each such contract shall provide that the obligation

1 of the United States for the ensuing fiscal years is contingent
2 upon the passage of an applicable appropriation, and that no
3 payment shall be made under the contract for the ensuing
4 fiscal years until such appropriation becomes available for
5 expenditure.

6 SEC. 306. UNAUTHORIZED USE.—The use, occupancy,
7 or development of any portion of the national resource lands
8 contrary to any regulation of the Secretary or other respon-
9 sible authority, or contrary to any order issued pursuant to
10 any such regulation, is unlawful and prohibited.

11 SEC. 307. ENFORCEMENT AUTHORITY.—(a) Any
12 person who violates—

13 (1) any regulation issued by the Secretary with
14 respect to the management, use, protection, develop-
15 ment, acquisition, or conveyance of the national resource
16 lands, including the resources and property located there-
17 on;

18 (2) any provision of a permit, lease, license, or
19 other document issued by the Secretary with respect to
20 the use, occupancy, or development of such public lands;
21 or

22 (3) any provision of this Act;
23 shall be fined not more than \$1,000 or imprisoned for
24 not longer than twelve months, or both. Any person
25 charged with a violation of such regulation may be tried

1 and sentenced by any United States magistrate desig-
2 nated for that purpose by the court by which he was
3 appointed, in the same manner and subject to the same
4 conditions and limitations as provided for in section 3401
5 of title 18 of the United States Code.

6 (b) For the specific purpose of enforcing any Federal
7 law or regulation relating to those national resource lands
8 or resources managed by him, the Secretary may designate
9 an employee who has had specialized law enforcement train-
10 ing to (1) execute and serve any warrant or other process
11 issued by a court or officer of competent jurisdiction; (2)
12 make arrests without warrant or process for a misdemeanor
13 he has reasonable grounds to believe is being committed in
14 his presence or view, or for a felony if he has reasonable
15 grounds to believe that the person to be arrested has com-
16 mitted or is committing such felony; (3) carry firearms (so
17 long as the employee has been specifically trained to handle
18 firearms, and then only to the extent necessary to carry out
19 his responsibilities while actually on duty) ; (4) search with-
20 out warrant or process any person, place, or conveyance ac-
21 cording to any law or rule of law; and (5) seize without
22 warrant or process any evidentiary item as provided by law.

23 (c) At the request of the Secretary, the Attorney Gen-
24 eral may institute a civil action in any United States district
25 court for an injunction or other appropriate order to prevent

1 any person from using the national resource lands in viola-
2 tion of laws or regulations relating to lands or resources
3 managed by the Secretary.

4 SEC. 308. COOPERATION WITH STATE AND LOCAL
5 LAW ENFORCEMENT AGENCIES.—In connection with ad-
6 ministration and regulation of the use and occupancy of the
7 national resource lands, the Secretary is authorized to co-
8 operate with the regulatory and law enforcement officials of
9 any State or political subdivision thereof. Such cooperation
10 may include reimbursement to a State or its subdivision for
11 expenditures incurred by it in connection with activities
12 which assist in the administration and regulation of use and
13 occupancy of national resource lands.

14 SEC. 309. CALIFORNIA CONSERVATION DESERT
15 AREA.—(a) The Congress finds that—

16 (1) the California desert contains historical, scenic,
17 archeological, environmental, biological, cultural, scien-
18 tific, and educational resources that are unique and
19 irreplaceable;

20 (2) the desert environment is a total ecosystem that
21 is extremely fragile, easily scarred, and slowly healed;

22 (3) the desert environment and its resources, in-
23 cluding certain rare and endangered species of wildlife,
24 plants, and fishes, and numerous archeological and his-
25 toric sites, are seriously threatened by air pollution, in-

1 adequate Federal management authority, and pressures
2 of increased use, particularly recreational use;

3 (4) because of the proximity of the California desert
4 to the rapidly growing population centers of southern
5 California, these threats are certain to intensify;

6 (5) the Secretary has initiated a comprehensive
7 planning process and established an interim management
8 program for the California desert; and

9 (6) to insure further study of the relationship of
10 man and the desert environment and preserve the unique
11 and irreplaceable resources of the California desert, the
12 public must be provided more opportunity to participate
13 in such planning and management, and additional man-
14 agement authority must be provided to the Secretary
15 to enable effective implementation of such planning and
16 management.

17 (b) It is the purpose of this section to provide for the
18 immediate and future protection and management of the
19 California desert within the framework of a program of
20 multiple use and the maintenance of environmental quality.

21 (c) (1) For the purpose of this section, the "California
22 Desert Conservation Area" is the area generally depicted
23 on a map entitled "California Desert Conservation Area—
24 Proposed", dated April 1974, and on file in the Office of

1 the Director of the Bureau of Land Management, exclusive
2 of lands administered by the National Park Service.

3 (2) As soon as practicable after this Act takes effect,
4 the Secretary shall file a map and a legal description of the
5 California desert conservation area with the Committees on
6 Interior and Insular Affairs of the United States Senate and
7 the House of Representatives, and such description shall have
8 the same force and effect as if included in this Act: *Provided*,
9 *however*, That correction of clerical and typographical errors
10 in such legal description and map may be made by the Sec-
11 retary. To the extent practicable, the Secretary shall make
12 such legal description and map available to the public
13 promptly upon request.

14 (d) (1) The Secretary, in accordance with section 104,
15 shall prepare and implement a comprehensive long-range
16 plan for the management, use, and protection of the national
17 resource lands within the California desert conservation area
18 in accordance with principles of multiple use and mainte-
19 nance of environmental quality. Such plan shall be com-
20 pleted and implementation thereof initiated on or before
21 June 30, 1979.

22 (2) In the development and maintenance of the plan,
23 the Secretary shall—

24 (i) use a systematic interdisciplinary approach

1 to achieve integrated consideration of physical, bio-
2 logical, economic, and social sciences;

3 (ii) consider all present and potential uses of the
4 lands;

5 (iii) consider the relative scarcity of the values
6 involved and the availability of alternative means (in-
7 cluding recycling) and sites for realization of those
8 values;

9 (iv) consider long-term public benefits, including
10 those of outdoor recreation and scenic values;

11 (v) consider the requirements of applicable pollu-
12 tion control laws including State and Federal air or
13 water quality standards, noise standards, and imple-
14 mentation plans; and

15 (vi) take into consideration the proposals of the
16 advisory committee, established pursuant to subsection
17 (f) of this section and proposals of other Federal
18 agencies and the State of California (or any political
19 subdivision thereof) including recommendations from
20 studies that have already been completed or are cur-
21 rently being prepared.

22 (e) During the period beginning on the date of enact-
23 ment of this Act and ending on the effective date of imple-
24 mentation of the comprehensive, long-range plan, the

1 Secretary shall execute an interim program to manage and
2 protect the national resource lands, and their resources now
3 in danger of destruction, in the California Desert Conser-
4 vation Area, to provide for the public use of such lands in an
5 orderly and reasonable manner such as through the develop-
6 ment of campgrounds and visitor centers, and to provide for a
7 uniformed desert ranger force.

8 (f) (1) The Secretary, within sixty days of enactment
9 of this Act, shall establish a California Desert Conservation
10 Area Advisory Commission (hereinafter referred to as
11 "advisory commission"). The Commission shall consist of a
12 representative from each Federal agency having jurisdiction
13 or control over lands within the California desert, representa-
14 tives of State and local governmental units (including law
15 enforcement agencies), representatives of the academic com-
16 munity having expertise in this field, representatives of
17 residents of the California desert (including American
18 Indians), environmentalists, and representatives of groups
19 which make use of the California desert and its resources for
20 purposes of recreation, study, or business.

21 (2) Appointments to the Commission shall be made by
22 the Secretary. Such appointments shall be made in accord-
23 ance with the provisions of subsection (a) of this section
24 and shall be made within the sixty-day period following the
25 date of the enactment of this Act. In making such appoint-

1 ments, the Secretary shall assure that the members of the
2 Commission will reflect the points of view of the different
3 races, ethnic groups, sexes, and ages of persons.

4 (3) The Secretary, within ninety days following the
5 date of the enactment of this Act, shall call the first
6 meeting of the Advisory Commission. The Chairman of the
7 Commission shall be elected by the members thereof. The
8 Chairman is authorized to employ and fix the compensation
9 of such employees as he determines necessary to enable the
10 Commission to carry out its functions under this Act, and
11 to reimburse the members for expenses incurred by them in
12 carrying out their duties under this Act.

13 (4) It shall be the function of the Advisory Commission
14 to advise the Secretary with respect to the preparation of
15 the long-range program and plan for the management, use,
16 and protection of the California desert.

17 (5) The Commission shall terminate upon the expira-
18 tion of sixty days following the date of the submission to
19 the Congress of the plan required under section 5 of this Act.

20 (g) The Secretaries of Agriculture and Defense shall
21 manage lands within their respective jurisdictions located in
22 or adjacent to the California Desert Conservation Area, in
23 accordance with the laws relating to such lands and wherever
24 practicable in a manner consonant with the purpose of this
25 section. The Secretaries of the Interior, Agriculture, and De-

1 fense are authorized and encouraged to consult among them-
2 selves and take cooperative actions to carry out this sub-
3 section.

4 (h) The Secretary shall report to the Congress no later
5 than two years after the enactment of this Act, and annually
6 thereafter in the report required in section 7 of this Act, on
7 the progress in, and any problems concerning, the implemen-
8 tation of this section, together with any recommendations,
9 which he may deem necessary, to remedy such problems.

10 (i) There is authorized to be appropriated for fiscal
11 years 1976 through 1980 not to exceed \$40,000,000 to effect
12 the purpose of this section, such amount to remain available
13 until expended.

14 SEC. 310. DESERT AREAS STUDY.—(a) The Secretary
15 shall identify and thoroughly study desert areas of the public
16 lands, other than the California Desert Conservation Area
17 specified in section 309, recognizing that—

18 (1) the desert environment is a total ecosystem that
19 is extremely fragile, easily scarred, and slowly healed;

20 (2) the desert environment and its resources may be
21 seriously threatened by air pollution, inadequate Fed-
22 eral management, and pressures of increased use, partic-
23 ularly recreational use; and

24 (3) in order to preserve the unique and irreplaceable
25 resources and conserve the use of economic resources

1 of desert areas further study of the relationship of man
2 and the desert environment (providing greater public
3 involvement) must be conducted.

4 (b) The Secretary shall submit a report to the Con-
5 gress, within five years after the date of enactment of this
6 Act, which shall include—

7 (1) a description (including maps) of each desert
8 area on the public lands;

9 (2) an analysis of the present condition of the total
10 ecosystem of each such desert area;

11 (3) a projection of the suitable uses which each
12 desert area could accept without damaging the total
13 ecosystem;

14 (4) an estimate of the natural resources contained
15 in the desert areas;

16 (5) a projection of the kinds of use demands which
17 are likely to be placed upon each desert area; and

18 (6) recommendations as to needed administrative
19 or legislative action which is necessary to insure that
20 Federal management of the desert areas is adequate to
21 fully protect and develop each such desert area.

22 (c) There is authorized to be appropriated not to exceed
23 \$1,500,000 for the purpose of this section.

24 SEC. 311. NATIONAL PARK, FOREST, WILDLIFE
25 REFUGE, AND WILD AND SCENIC RIVER STUDY.—(a)

1 Before the close of the five-year period following the effective
2 date of this Act, the Secretary shall review all lands and
3 waters under his jurisdiction on the effective date of this Act
4 (including lands previously classified or withdrawn, but
5 excluding lands in the National Park System, National Wild-
6 life Refuge System, and lands recommended for inclusion in
7 those systems and in the National Forest System pursuant to
8 section 17 (d) (2) of the Alaska Native Claims Settlement
9 Act) and withdraw from all forms of appropriation under the
10 public land laws, including the mining and mineral leasing
11 laws, those lands and waters which he deems suitable for
12 addition to, or classification as, units of the National Park
13 System, National Forest System, National Wildlife Refuge
14 System, and Wild and Scenic River System.

15 (b) The Secretary shall submit recommendations to
16 the President with respect to those lands withdrawn by
17 the Secretary pursuant to subsection (a). The President
18 shall promptly advise the President of the Senate and the
19 Speaker of the House of Representatives of his recommenda-
20 tions with respect to the additions proposed by the Secre-
21 tary. The Secretary shall, in conducting the review required
22 by this subsection, hold public hearings in accordance with
23 the procedures set forth in section 3 (d) of the Wilderness
24 Act (78 Stat. 890).

1 TITLE IV—AUTHORITY TO GRANT

2 RIGHTS-OF-WAY

3 SEC. 401. AUTHORIZATION TO GRANT RIGHTS-OF-
4 WAY.—(a) The Secretary is authorized to grant, issue, or
5 renew rights-of-way over, upon, or through the national
6 resource lands for—

7 (1) Reservoirs, canals, ditches, flumes, laterals,
8 pipes, pipelines, tunnels, and other facilities and systems
9 for the impoundment, storage, transportation, or distri-
10 bution of water;

11 (2) Pipelines and other systems for the transporta-
12 tion or distribution of liquids and gases, other than oil,
13 natural gas, synthetic liquid or gaseous fuels, or any
14 refined product produced therefrom, or water and for
15 storage and terminal facilities in connection therewith;

16 (3) Pipelines, slurry and emulsion systems, and
17 conveyor belts for transportation and distribution of solid
18 materials, and facilities for the storage of such materials
19 in connection therewith;

20 (4) Systems for generation, transmission, and dis-
21 tribution of electric energy, except that the applicant
22 shall also comply with all applicable requirements of the
23 Federal Power Commission under the Act of June 10,
24 1920, as amended (16 U.S.C. 796, 797) ;

1 (5) Systems for transmission or reception of radio,
2 television, telegraph, and other electronic signals, and
3 other means of communication;

4 (6) Roads, trails, highways, railroads, canals,
5 tramways, airways, livestock driveways, or other means
6 of transportation; and

7 (7) Such other necessary transportation or other
8 systems or facilities which are in the public interest and
9 which require rights-of-way over, upon, or through the
10 national resource lands.

11 (b) (1) The Secretary shall require, prior to granting,
12 issuing, or renewing a right-of-way, that the applicant sub-
13 mit and disclose any or all plans, contracts, agreements, or
14 other information or material reasonably related to the use,
15 or intended use, of the right-of-way which he deems neces-
16 sary to a determination, in accordance with the provisions of
17 this title, as to whether a right-of-way shall be granted,
18 issued, or renewed and the terms and conditions which should
19 be included in such right-of-way.

20 (2) If the applicant is a partnership, corporation,
21 association, or other business entity, the Secretary, prior to
22 granting a right-of-way pursuant to this title, shall require
23 the applicant to disclose the identity of the participants
24 in the entity. Such disclosure shall include, where ap-
25 plicable: (1) the name and address of each partner;

1 (2) the name and address of each shareholder owning 3
2 per centum or more of the shares, together with the number
3 and percentage of any class of voting shares of the entity
4 which such shareholder is authorized to vote; and (3) the
5 name and address of each affiliate of the entity together with,
6 in the case of an affiliate controlled by the entity, the
7 number of shares and the percentage of any class of voting
8 stock of that affiliate owned, directly or indirectly, by that
9 entity, and, in the case of an affiliate which controls that en-
10 tity, the number of shares and the percentage of any class of
11 voting stock of that entity owned, directly or indirectly, by
12 the affiliate.

13 (c) Nothing in this title shall be deemed to limit in any
14 way the authority of the Secretary to make grants, issue
15 leases, licenses, or permits, or enter into contracts under other
16 provisions of law, for purposes ancillary or complementary
17 to the construction, operation, maintenance, or termination
18 of any facility authorized under this title, but such action
19 shall not be in substitution for or inconsistent with the pro-
20 visions of this title.

21 (d) This title shall be administered in a manner to
22 promote competition.

23 SEC. 402. RIGHT-OF-WAY CORRIDORS.—In order to
24 minimize the proliferation of separate rights-of-way across
25 national resource lands, the use of rights-of-way in common

1 shall be required to the extent practical, and each right-of-
2 way or permit shall reserve to the Secretary the right to
3 grant additional rights-of-way or permits for compatible uses
4 on or adjacent to rights-of-way granted pursuant to this
5 title.

6 SEC. 403. GENERAL PROVISIONS.—(a) The Secretary
7 shall specify the boundaries of each right-of-way as precisely
8 as is practicable. Each right-of-way shall be limited to the
9 ground which the Secretary determines: (1) will be occu-
10 pied by facilities which constitute the project for which the
11 right-of-way is given, (2) to be necessary for the operation
12 or maintenance of the project, (3) to be necessary to pro-
13 tect the environment or public safety, and (4) where the
14 least environmental damage will occur. The Secretary may
15 authorize the temporary use of such additional lands as he
16 determines to be reasonably necessary for the construction,
17 operation, maintenance, or termination of the project or a
18 portion thereof, or for access thereto.

19 (b) The Secretary shall determine the duration of each
20 right-of-way or other authorization to be granted, issued, or
21 renewed pursuant to this title. In determining the duration
22 the Secretary shall, among other things, take into considera-
23 tion the cost of the facility and its useful life and potential
24 alternative future uses of the land.

25 (c) Rights-of-way granted, issued, or renewed pursuant

1 to this title shall be given under such regulations or stipula-
2 tions, in accord with the provision of this title or any other
3 law, and subject to such terms and conditions as the Secre-
4 tary may prescribe regarding extent, duration, survey,
5 location, construction, maintenance, and termination.

6 (d) The Secretary, prior to granting a right-of-way
7 pursuant to this title for a new project which may have a
8 significant impact on the environment, shall require the
9 applicant to submit a plan of construction, operation, and
10 rehabilitation for such right-of-way which shall comply with
11 stipulations or with regulations issued by the Secretary.
12 The Secretary shall issue regulations and impose stipulations
13 on each right-of-way containing such terms and conditions
14 as he deems appropriate to (1) carry out the purposes of
15 this Act and rules and regulations hereunder; (2) protect
16 the environment; (3) assure compliance with applicable
17 air and water quality standards and siting requirements
18 established by or pursuant to law; (4) protect public and
19 private property and economic interests; (5) manage
20 efficiently the public lands which are subject to the right-of-
21 way or adjacent thereto and protect the other lawful users of
22 the public lands adjacent to or traversed by such right-of-
23 way; (6) protect lives and public health and safety; (7)
24 protect the interests of individuals living in the general area
25 traversed by the right-of-way who rely on the fish, wildlife,

1 and biotic resources of the area for subsistence purposes; (8)
2 protect the public interest in the public lands; and (9)
3 minimize damage to esthetic, ecological and archeological
4 values including the selection of the right-of-way which
5 causes the least damage to the environment. Such regula-
6 tions shall be regularly revised. Such regulations shall be
7 applicable to every right-of-way granted pursuant to this
8 title, and may be applicable to rights-of-way to be renewed
9 pursuant to this title.

10 (e) Mineral and vegetative materials, including timber,
11 within or without a right-of-way may be used or disposed
12 of in connection with construction or other purposes only if
13 authorization to remove or use such materials has been ob-
14 tained pursuant to applicable laws.

15 (f) The holder of a right-of-way shall pay annually in
16 advance no less than the fair market value thereof as deter-
17 mined by the Secretary. The Secretary may, by regulation
18 or prior to promulgation of such regulations, as a condition
19 of a right-of-way, require an applicant for or holder of a
20 right-of-way to reimburse the United States for all reasonable
21 administrative and other costs incurred in processing an appli-
22 cation for such right-of-way and in inspection and monitoring
23 of construction, operation, and termination of the facility
24 pursuant to such right-of-way: *Provided, however, That*
25 *rights-of-way may be granted, issued, or renewed to a Fed-*

1 eral, State or local government or agencies or instrumen-
2 talities thereof, or to nonprofit associations or nonprofit cor-
3 porations which are not themselves controlled or owned by
4 profitmaking corporations or business enterprises, for such
5 lesser charge as the Secretary finds equitable and in the public
6 interest. Such rights-of-way issued at less than fair market
7 value are not assignable except with the approval of the
8 Secretary.

9 (g) The Secretary shall promulgate regulations specify-
10 ing the extent to which holders of rights-of-way under this
11 title shall be liable to the United States for damage or injury
12 incurred by the United States in connection with the rights-
13 of-way.

14 (h) Where he deems it appropriate, the Secretary may
15 require a holder of a right-of-way to furnish a bond, or other
16 security, satisfactory to the Secretary to secure all or any
17 of the obligations imposed by the terms and conditions of the
18 right-of-way or by any rule or regulation of the Secretary.

19 (i) The Secretary shall grant, issue, or renew a right-
20 of-way under this title only when he is satisfied that the
21 applicant has the technical and financial capability to con-
22 struct the project for which the right-of-way is requested, and
23 in accord with the requirements of this title.

24 SEC. 404. SUSPENSION OR TERMINATION OF RIGHT-
25 OF-WAY.—Abandonment of the right-of-way or noncompli-

1 ance with any provision of this title, condition of the right-
2 of-way, or applicable rule or regulation of the Secretary may
3 be grounds for suspension or termination of the right-of-way
4 if, after due notice to the holder of the right-of-way and an
5 appropriate administrative proceeding pursuant to title 5,
6 United States Code, section 554, the Secretary determines
7 that any such ground exists and that suspension or termi-
8 nation is justified. No administrative proceeding shall be re-
9 quired where the right-of-way by its terms provides that it
10 terminates on the occurrence of a fixed or agreed-upon con-
11 dition, event, or time. If the Secretary determines that an
12 immediate temporary suspension of activities within a right-
13 of-way for violation of its terms and conditions is necessary
14 to protect public health or safety or the environment, he may
15 abate such activities prior to an administrative proceeding.
16 Prior to commencing any proceeding to suspend or terminate
17 a right-of-way the Secretary shall give written notice to the
18 holder of the ground or grounds for such action and shall
19 give the holder a reasonable time to resume use of the right-
20 of-way or to comply with this title, condition, rule, or regu-
21 lation as the case may be. Deliberate failure of the holder of
22 the right-of-way to use the right-of-way for the purpose for
23 which it was granted, issued, or renewed for any continuous
24 five-year period shall constitute a rebuttable presumption of
25 abandonment of the right-of-way: *Provided, however, That*

1 where the failure of the holder to use the right-of-way for the
2 purpose for which it was granted, issued, or renewed for any
3 continuous five-year period is due to circumstances not within
4 the holder's control the Secretary is not required to com-
5 mence proceedings to suspend or terminate the right-of-way.

6 **SEC. 405. RIGHTS-OF WAY FOR FEDERAL AGEN-**
7 **CIES.**—The Secretary may reserve for the use of any
8 department or agency of the United States a right-of-way
9 over, upon, or through national resource lands, subject to
10 such terms and conditions as he may impose. The provisions
11 of this title shall be applicable to any such right-of-way.

12 **SEC. 406. CONVEYANCE OF LANDS.**—If under appli-
13 cable law the Secretary decides to transfer out of Federal
14 ownership, by patent, deed, or otherwise, any national re-
15 source lands covered in whole or in part by a right-of-way,
16 including a right-of-way granted under the Act of Novem-
17 ber 16, 1973 (87 Stat. 576), the lands may be conveyed
18 subject to the right-of-way; however, if the Secretary de-
19 termines that retention of Federal control over the right-of-
20 way is necessary to assure that the purposes of this title will
21 be carried out, the terms and conditions of the right-of-way
22 complied with, or the national resource lands protected, he
23 shall (1) reserve to the United States that portion of the
24 lands which lies within the boundaries of the right-of-way,
25 or (2) convey the lands, including that portion within the

1 boundaries of the right-of-way, subject to the right-of-way
2 and reserving to the United States the right to enforce all
3 or any of the terms and conditions of the right-of-way, in-
4 cluding the right to renew it or extend it upon its termina-
5 tion and to collect rents.

6 SEC. 407. EXISTING RIGHTS-OF-WAY.—Nothing in this
7 title shall have the effect of terminating any rights-of-way or
8 rights-of-use heretofore issued, granted, or permitted by the
9 Secretary. However, with the consent of the holder thereof,
10 the Secretary may cancel such a right-of-way and in its stead
11 issue a right-of-way pursuant to the provisions of this title.

12 SEC. 408. STATE STANDARDS.—The Secretary shall
13 take into consideration and, to the extent practical, comply
14 with State standards for right-of-way construction, operation,
15 and maintenance if those standards are more stringent than
16 Federal standards and if the national resource lands are ad-
17 jacent to lands to which such State standards apply.

18 SEC. 409. EFFECT ON OTHER LAWS.—(a) After the
19 date of enactment of this Act, no right-of-way for the pur-
20 poses listed in this title shall be granted, issued, or renewed
21 over, upon, or through national resource lands except under
22 and subject to the provisions, limitations, and conditions of
23 this title: *Provided*, That any application for a right-of-way
24 filed under any other law prior to the date of enactment of
25 this Act may, at the applicant's option, be considered as an

1 application under this title or the Act under which the appli-
2 cation was filed. The Secretary may require the applicant
3 to submit any additional information he deems necessary to
4 comply with the requirements of this title.

5 (b) Nothing in this title shall be construed to preclude
6 the use of national resource lands for highway purposes pur-
7 suant to sections 107 and 317 of title 23, United States Code.

8 (c) (1) Nothing in this title shall be construed as
9 exempting any holder of a right-of-way issued under this
10 title from any provision of the antitrust laws of the United
11 States.

12 (2) For the purposes of this subsection, the term "anti-
13 trust laws" includes the Act of July 2, 1890; the Act of
14 October 15, 1914; the Federal Trade Commission Act (15
15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of
16 August 27, 1894.

17 TITLE V—CONSTRUCTION OF LAW, PRESERVA-
18 TION OF VALID EXISTING RIGHTS, AND
19 REPEAL OF LAWS

20 SEC. 501. CONSTRUCTION OF LAW.—(a) Except as
21 provided in section 409, the authority conferred upon the
22 Secretary by this Act is in addition to all other authority
23 vested in him by law, and nothing in this Act shall be deemed
24 to repeal any such other authority by implication.

25 (b) Nothing in this Act shall be construed as limiting

1 or restricting the power and authority of the United States,
2 or—

3 (1) as affecting in any way any law governing
4 appropriations or use of, or Federal right to, water on
5 national resource lands;

6 (2) as expanding or diminishing Federal or State
7 jurisdiction, responsibility, interests, or rights in water
8 resources development or control;

9 (3) as displacing, superseding, limiting, or modify-
10 ing any interstate compact or the jurisdiction or respon-
11 sibility of any legally established joint or common agency
12 of two or more States or of two or more States and the
13 Federal Government;

14 (4) as superseding, modifying, or repealing, except
15 as specifically set forth in this Act, existing laws ap-
16 plicable to the various Federal agencies which are au-
17 thorized to develop or participate in the development of
18 water resources or to exercise licensing or regulatory
19 functions in relation thereto;

20 (5) as modifying the terms of any interstate com-
21 pact;

22 (6) as a limitation upon any State criminal statute
23 or upon the police power of the respective States, or as
24 derogating the authority of a local police officer in the
25 performance of his duties, or as depriving any State or

53

1 political subdivision thereof of any right it may have to
 2 exercise civil and criminal jurisdiction on the national
 3 resource lands;

4 (7) as affecting the jurisdiction or responsibilities of
 5 the several States with respect to wildlife and fish in the
 6 national resource lands; or

7 (8) as amending, limiting, or infringing the exist-
 8 ing laws providing grants of land to the States.

9 SEC. 502. VALID EXISTING RIGHTS.—All actions by
 10 the Secretary under this Act shall be subject to valid exist-
 11 ing rights.

12 SEC. 503. REPEAL OF LAWS RELATING TO DISPOSAL
 13 OF NATIONAL RESOURCE LANDS.—(a) The following
 14 statutes or parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Homesteads:				
Revised Statute 2289				161, 171.
Mar. 3, 1891	561	5	26: 1097	161, 162.
Revised Statute 2290				162.
Revised Statute 2295				163.
Revised Statute 2291				164.
June 6, 1912	153		37: 123	164, 169, 218.
May 14, 1890	89		21: 141	166, 185, 202, 223.
June 6, 1900	821		31: 663	166, 223.
Aug. 9, 1912	280		37: 267	
Apr. 6, 1914	51		38: 312	167.
Mar. 1, 1921	90		41: 1199	
Oct. 17, 1914	325		38: 740	168.
Revised Statute 2297				169.
Mar. 3, 1891	153		21: 511	
Oct. 22, 1914	335		38: 766	170.
Revised Statute 2292				171.
June 6, 1890	186		21: 166	172.
Revised Statute 2301				173.
Mar. 3, 1891	561	6	26: 1098	
June 3, 1896	312	2	29: 197	
Revised Statute 2288				174.
Mar. 3, 1891	561	8	26: 1097	
Mar. 3, 1905	1424		33: 991	
Revised Statute 2296				175.
Apr. 28, 1922	155		42: 502	
May 17, 1900	479	1	31: 179	179.
Jan. 26, 1901	180		31: 740	180.
Sept. 5, 1914	294		38: 712	182.
Revised Statute 2300				183.
Aug. 31, 1918	166	8	40: 957	
Sept. 13, 1918	178		40: 980	
Revised Statute 2302				184, 201.
July 26, 1892	251		27: 270	185.
Feb. 14, 1920	76		41: 484	186.
Jan. 21, 1922	82		42: 358	
Dec. 28, 1922	19		42: 1087	
June 12, 1930	471		46: 580	
Feb. 25, 1925	326		43: 981	187.
June 21, 1934	660		48: 1185	187a.
May 22, 1902	821	2	32: 338	187b.
June 5, 1900	716		31: 270	188, 217.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Homesteads—Continued				
Mar. 3, 1875	181	15	18: 420	189.
July 4, 1884	180	Only last paragraph of sec. 1.	23: 96	190.
Mar. 1, 1933	160	1	47: 1418	190a.
The following words only: "Provided, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96: U.S.C. title 43, sec. 190)."				
Revised Statutes 2310, 2311				191.
June 13, 1902	1080		32: 384	203.
Mar. 3, 1879	191		20: 472	201.
July 1, 1879	60		21: 46	205.
May 6, 1886	88		21: 22	206.
Aug. 21, 1916	361		39: 518	207.
June 3, 1924	240		43: 357	208.
Revised Statute 2248				211.
Aug. 30, 1890	537		26: 391	212.
The following words only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act."				
Mar. 3, 1891	561	17	26: 1101	
The following words only: "and that the provision of 'An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes,' which reads as follows, viz: 'No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws,' shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws."				
Apr. 28, 1904	1776		33: 527	213.
Aug. 3, 1860	521		64: 398	
Mar. 2, 1889	381	6	25: 854	214.
Feb. 29, 1917	36		38: 925	215.
Mar. 4, 1921	162	1	41: 1433	216.
Feb. 19, 1909	160		35: 639	218.
June 13, 1912	166		37: 132	
Mar. 3, 1915	84		38: 953	
Mar. 3, 1915	91		38: 957	
Mar. 4, 1915	150	2	38: 1163	
July 3, 1916	220		39: 344	
Feb. 11, 1918	39		37: 666	218, 219.
June 17, 1910	298		36: 531	219.
Mar. 3, 1915	91		38: 957	
Sept. 5, 1916	410		39: 724	
Aug. 10, 1917	42	10	40: 275	
Mar. 4, 1915	150	1	38: 1162	220.
Mar. 4, 1923	245	1	42: 1445	222.
Apr. 28, 1904	1801		33: 547	221.
Mar. 2, 1907	2527		34: 1224	
May 29, 1908	220		35: 466	
Aug. 24, 1912	371		37: 499	
Aug. 22, 1914	270		38: 704	231.
Feb. 25, 1919	214		40: 1153	
July 3, 1916	214		39: 341	232.
Sept. 29, 1919	64		41: 288	233.
Apr. 6, 1922	122		42: 491	233, 272, 273.
Mar. 2, 1889	381	3	25: 854	234.
Dec. 26, 1884	14		38: 589	
July 1, 1879	63	1	21: 48	235.
Dec. 20, 1917	6		40: 430	236.
July 24, 1919	26	Next to last paragraph only.	41: 271	237.
Mar. 2, 1932	69		47: 59	237a.
May 21, 1884	330		48: 787	237b.
May 22, 1935	135		49: 286	237c.
Aug. 19, 1935	560		49: 659	237d.
Mar. 31, 1938	57		52: 149	
Apr. 20, 1938	239		49: 1235	237e.
July 30, 1950	778	1, 2, 4	70: 715	237f, g, h.
Mar. 1, 1921	102		41: 1202	238.
Apr. 7, 1922	125		42: 492	
Revised Statute 2308				239.
June 16, 1898	458		30: 473	240.
Aug. 29, 1916	420		39: 671	
Apr. 7, 1930	106		46: 141	243.
Mar. 3, 1933	198		47: 1424	243a.
Mar. 3, 1879	192		20: 472	251.
Mar. 2, 1889	381	7	25: 855	252.
June 3, 1878	152		20: 91	253.
Revised Statute 2294				254.
May 26, 1890	355		26: 121	
Mar. 11, 1922	152		42: 63	
Mar. 4, 1904	304		33: 59	
Feb. 23, 1923	105		42: 1281	
Revised Statute 2293				255.
Oct. 6, 1917	86		40: 391	
Mar. 4, 1913	149	Only last paragraph of section headed "Public Land Service."	37: 925	256.
May 13, 1932	178		47: 153	256a.
June 16, 1933	99		48: 274	

Act of	Chapter	Section	Statute at Large	43 U. S. Code
July 26, 1935.....	419.....		49: 504.....	
June 16, 1937.....	361.....		50: 303.....	
Aug. 27, 1935.....	770.....		40: 909.....	256b.
Sept. 30, 1930.....	J. Res. 59.....		26: 684.....	261.
June 16, 1930.....	244.....		21: 287.....	263.
Apr. 18, 1904.....	25.....		33: 599.....	
Revised Statute 2304.....				271.
Mar. 1, 1901.....	674.....		31: 847.....	271, 272.
Revised Statute 2305.....				272.
Feb. 25, 1919.....	87.....		40: 1161.....	272a.
Dec. 28, 1922.....	19.....		42: 1087.....	
Revised Statute 2306.....				274.
Mar. 3, 1903.....	208.....		27: 593.....	275.
The following words only: "And provided further: That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land; but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."				
Aug. 18, 1904.....	301.....	Only last paragraph of Section headed "Surveying the Public Lands."	28: 397.....	276.
Revised Statute 2309.....				277.
Revised Statute 2307.....				278.
Sept. 21, 1922.....	357.....		43: 990.....	
Sept. 27, 1944.....	421.....		58: 747.....	279-283.
June 25, 1946.....	474.....		60: 308.....	279.
May 31, 1947.....	58.....		61: 123.....	279, 280, 282.
June 18, 1954.....	305.....		68: 253.....	279, 287.
June 3, 1948.....	306.....		62: 305.....	283, 284.
Dec. 29, 1916.....	9.....	1-8.....	39: 862.....	291-298.
Feb. 28, 1931.....	328.....		46: 1454.....	291.
June 9, 1933.....	53.....		48: 119.....	291.
June 6, 1924.....	274.....		46: 489.....	292.
Oct. 25, 1918.....	195.....		40: 1016.....	293.
Sept. 29, 1919.....	63.....		41: 287.....	294, 295.
Mar. 4, 1923.....	245.....	2.....	42: 1445.....	302.
Aug. 21, 1916.....	361.....		39: 518.....	1075.
Aug. 28, 1937.....	876.....	3.....	50: 875.....	1181c.
2. Desert Land Entries:				
Mar. 3, 1877.....	107.....	2, 3.....	19: 377.....	322-323, 325, 327-329.
Mar. 3, 1891.....	561.....	2.....	26: 1096.....	
Except the words: "... all acts and parts of acts in conflict with this act are hereby repealed."				
Jan. 6, 1921.....	12.....		41: 1086.....	
Mar. 29, 1906.....	112.....		35: 52.....	374, 376, 333.
Feb. 27, 1917.....	134.....		39: 946.....	330.
Mar. 1, 1921.....	102.....		41: 1202.....	331.
Dec. 15, 1921.....	3.....		42: 348.....	332.
Aug. 7, 1917.....	101.....		40: 250.....	332.
Apr. 30, 1912.....	101.....		37: 106.....	224.
Feb. 25, 1925.....	329.....		43: 982.....	336.
July 30, 1956.....	778.....		70: 715.....	336a-d.
Mar. 4, 1915.....	147.....	5.....	38: 1161.....	335, 337, 338.
Mar. 29, 1918.....	26.....		40: 458.....	
Mar. 4, 1929.....	687.....		45: 1548.....	330.
Feb. 14, 1934.....	9.....		48: 349.....	
3. Sale and Disposal Laws:				
Mar. 3, 1891.....	561.....	9.....	26: 1099.....	671.
Revised Statute 2354.....				673.
Revised Statute 2355.....				674.
May 18, 1898.....	344.....	2.....	30: 418.....	675.
Revised Statute 2365.....				676.
Revised Statute 2357.....				678.
June 15, 1960.....	227.....	3, 4.....	21: 238.....	679, 680.
Mar. 2, 1889.....	381.....	4.....	25: 854.....	681.
Mar. 1, 1907.....	2286.....		34: 1053.....	682.
June 1, 1938.....	317.....		52: 609.....	682a-e.
July 14, 1945.....	298.....		59: 467.....	
June 8, 1954.....	270.....		68: 249.....	
Revised Statute 2361.....				688.
Revised Statute 2362.....				689.
Revised Statute 2363.....				690.
Revised Statute 2368.....				691.
Revised Statute 2366.....				692.
Revised Statute 2369.....				703.
Revised Statute 2370.....				694.
Revised Statute 2371.....				695.
Revised Statute 2374.....				697.
Revised Statute 2373.....				697.
Feb. 24, 1909.....	181.....		35: 645.....	
May 21, 1926.....	353.....	The two provisions only.	41: 591.....	
Revised Statute 2375.....				698.
Revised Statute 2376.....				699.
Mar. 2, 1889.....	381.....	1.....	25: 854.....	700.
1. Townsite Reservation and Sale:				
Revised Statute 2380.....				711.
Revised Statute 2381.....				712.
Revised Statute 2382.....				716.
Aug. 24, 1954.....	964.....		68: 792.....	

Act of	Chapter	Section	Statute at Large	43 U.S. Code
4. Townsite Reservation and Sale:—Continued				
Revised Statute 2383				714.
Revised Statute 2384				715.
Revised Statute 2385				717.
Revised Statute 2387				718.
Revised Statute 2388				719.
Revised Statute 2389				720.
Revised Statute 2391				721.
Revised Statute 2392				722.
Revised Statute 2393				723.
Revised Statute 2394				724.
Mar. 3, 1877	113.	1, 3, 4.	19: 392.	725-727.
Mar. 3, 1891	561.	16.	26: 1101.	728.
July 9, 1914	189.		38: 454.	730.
Feb. 9, 1902	531.		32: 820.	731.
5. Drainage Under State Laws:				
May 20, 1908	181.	1-7.	35: 171.	1021-1027.
May 1, 1908	P. L. 85-387.		72: 99.	1029-1034.
Jan. 17, 1920	47.		41: 892.	1041-1048.
6. Abandoned Military Reservation:				
July 5, 1884	214.	5.	23: 104.	1074.
Aug. 21, 1916	361.		30: 518.	1075.
Mar. 3, 1893	206.		27: 598.	1076.
The following words only: "Provided, That the President is hereby authorized by proclamation to with hold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place."				
Aug. 23, 1894	314.		28: 491.	1077, 1078.
Feb. 11, 1903	543.		32: 822.	1079.
Feb. 15, 1895	926.		28: 664.	1080, 1077.
Apr. 22, 1893	1498.		33: 908.	1081.
7. Public Lands: Oklahoma:				
May 2, 1890	182.	Last para- graph of sec. 18 and secs. 20, 21, 22, 24, 27.	26: 90.	1091-1094, 1096, 1097.
Mar. 8, 1891	543.	16.	26: 1026.	1098.
Aug. 7, 1946	372.	1, 2.	60: 672.	1100-1101.
Aug. 3, 1885	498.	1-8.	09: 445.	1102-1103g.
May 14, 1890	207.		26: 109.	1111-1117.
Sept. 1, 1893	J. Res. 4.		28: 11.	1118.
May 11, 1896		1, 2.	28: 118.	1119.
Jan. 18, 1897	62.	1-3, 5, 7.	29: 490.	1131-1134.
June 23, 1897	8.		30: 105.	
Mar. 1, 1899	328.		30: 966.	
8. Sales of Isolated Tracts:				
Revised Statute 2455				1171.
Feb. 26, 1895	133.		28: 687.	
June 27, 1906	2554.		34: 517.	
Mar. 28, 1912	67.		37: 77.	
Mar. 9, 1928	164.		45: 253.	
June 28, 1934	865.	14.	48: 1274.	
July 30, 1947	383.		61: 630.	
Apr. 24, 1928	428.		45: 457.	1171a.
May 23, 1930	313.		46: 377.	1171b.
Feb. 4, 1919	13.		40: 1055.	1172.
May 10, 1920	178.		41: 945.	1173.
Aug. 11, 1921	62.		42: 159.	1175.
May 19, 1926	337.		44: 566.	1176.
Feb. 14, 1931	170.		46: 1105.	1177.
9. Alaska Special Laws:				
Mar. 3, 1891	561.	11.	26: 1009.	732.
May 25, 1926	379.		44: 629.	733-736.
May 29, 1963	P. L. 88-34.		77: 52.	
July 24, 1947	305.		61: 414.	738.
May 14, 1898	299.	1.	30: 409.	270.
Mar. 3, 1905	1002.		32: 1028.	
Apr. 29, 1950	137.	1.	64: 94.	
Aug. 3, 1955	496.		69: 444.	270, 687a-2.
Apr. 29, 1950	137.	2-5.	64: 95.	270, 270 5.
July 11, 1956	571.	2.	70: 529.	270-6, 270 7, 687a-1.
July 8, 1916	228.		36: 855.	270 8, 270 9.
June 28, 1918	110.		40: 632.	270-10, 270 14.
July 11, 1956	571.	1.	70: 528.	
Mar. 8, 1922	96.		42: 415.	270-11.
Aug. 23, 1908	P. L. 85-725.	1, 4.	72: 730.	
Aug. 17, 1961	P. L. 87-147.		75: 384.	270-13.
Oct. 3, 1962	P. L. 87-742.		76: 740.	
Apr. 13, 1926	121.		44: 243.	270-15.
Apr. 29, 1950	134.	3.	64: 93.	270-16, 270-17.
May 14, 1898	290.	10.	30: 413.	270-4, 687a to 687a-5.
Mar. 3, 1927	323.		44: 1364.	
May 26, 1934	348.		48: 849.	
Aug. 23, 1958	P. L. 85-725.	3.	72: 730.	
Mar. 3, 1891	561.	13.	26: 1100.	687a-6.
Aug. 30, 1949	521.		63: 679.	687b to 687b-4.
July 19, 1963	P. L. 88-66.		77: 80.	687b-5.
10. Pittman Underground Water Act:				
Sept. 22, 1922	400.		42: 1012.	356.

1 (b) Section 7 of the Taylor Grazing Act, 48 Stat. 1272,
2 ch. 865, as amended by section 2 of the Act of June 26,
3 1936, 49 Stat. 1976, ch. 842, title I, 43 U.S.C. 315f, is
4 further amended to read as follows:

5 “The Secretary of the Interior is authorized, in his dis-
6 cretion to examine and classify any lands withdrawn or
7 reserved by Executive order of November 26, 1934 (num-
8 bered 6910), and amendments thereto, and Executive order
9 of February 5, 1935 (numbered 6964), or within a grazing
10 district, which are more valuable or suitable for any other
11 use than for the use provided for under this Act, or proper
12 for acquisition in satisfaction of any outstanding lien, ex-
13 change or land grant, and to open such lands to disposal in
14 accordance with such classification under applicable public
15 land laws. Such lands shall not be subject to disposition until
16 after the same have been classified and opened to disposal.”.

17 (c) Section 1 of the Act of March 3, 1877 (19 Stat.
18 377, chapter 107), as amended by section 2 of the Act of
19 March 3, 1891 (26 Stat. 1096, chapter 561, 53 U.S.C.
20 321), is repealed except the following language: “All sur-
21 plus water over and above such actual appropriation and
22 use, together with the water of all lakes, rivers, and other
23 sources of water supply upon the public lands and not navi-

1 gable, shall remain and be held free for the appropriation
2 and use of the public for irrigation, mining, and manufactur-
3 ing purposes subject to existing rights.”.

4 (d) Section 2 of the Act of March 8, 1922 (42 Stat.
5 416, ch. 96), as amended by section 2 of the Act of August
6 23, 1958, 72 Stat. 730, Public Law 85-725, 43 U.S.C.
7 270-12), is further amended to read:

8 “The coal, oil, or gas deposits reserved to the United
9 States in accordance with the Act of March 8, 1922 (42
10 Stat. 415, ch. 96, as added to by the Act of August 17,
11 1961, 75 Stat. 384, Public Law 87-147, and amended by
12 the Act of October 3, 1962, 76 Stat. 740, Public Law 87-
13 742), shall be subject to disposal by the United States in
14 accordance with the provisions of the laws applicable to coal,
15 oil, or gas deposits or coal, oil, or gas lands in Alaska in
16 force at the time of such disposal. Any person qualified to
17 acquire coal, oil, or gas deposits, or the right to mine or
18 remove the coal or to drill for and remove the oil or gas
19 under the laws of the United States shall have the right at
20 all times to enter upon the lands patented under the Act
21 of March 8, 1922, as amended, and in accordance with the
22 provisions hereof, for the purpose of prospecting for coal, oil,
23 or gas therein, upon the approval by the Secretary of the
24 Interior of a bond or undertaking to be filed with him as

1 security for the payment of all damages to the crops and
2 improvements on such lands by reason of such prospecting.
3 Any person who has acquired from the United States the
4 coal, oil, or gas deposits in any such land, or the right to
5 mine, drill for, or remove the same, may reenter and occupy
6 so much of the surface thereof incident to the mining and
7 removal of the coal, oil, or gas therefrom, and mine and
8 remove the coal or drill for and remove oil and gas upon
9 payment of the damages caused thereby to the owner thereof,
10 or upon giving a good and sufficient bond or undertaking in
11 an action instituted in any competent court to ascertain and
12 fix said damages: *Provided*, That the owner under such
13 limited patent shall have the right to mine the coal for use
14 on the land for domestic purposes at any time prior to the
15 disposal by the United States of the coal deposits: *Provided*
16 *further*, That nothing in this Act shall be construed as au-
17 thorizing the exploration upon or entry of any coal deposits
18 withdrawn from such exploration and purchase.”.

19 (e) Section 3 of the Act of August 30, 1949 (63 Stat.
20 679, ch. 521, 43 U.S.C. 6782-2), is amended to read:

21 “Notwithstanding the provisions of any Act of Congress
22 to the contrary, any person who prospects for, mines, or
23 removes any minerals from any land disposed of under the
24 Act of August 30, 1949 (63 Stat. 679, ch. 521), shall be

1 liable for any damage that may be caused to the value of the
 2 land and tangible improvements thereon by such prospecting
 3 for, mining, or removal of minerals. Nothing in this section
 4 shall be construed to impair any vested right in existence on
 5 August 30, 1949.”.

6 SEC. 504. REPEAL OF LAWS RELATING TO ADMINIS-
 7 TRATION OF NATIONAL RESOURCE LANDS.—The following
 8 statutes or parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Mar. 2, 1895.....	174.....		28: 741.....	176.
2. June 28, 1934.....	863.....	8.....	48: 1273.....	315g.
June 26, 1936.....	842.....	3.....	49: 1576, title 1.	
June 19, 1948.....	518.....	1.....	62: 533.....	
July 9, 1962.....	P.L. 87-521.....		76: 140.....	315g-1.
3. Aug. 21, 1937.....	714.....		50: 718.....	315p.
4. Mar. 3, 1909.....	571.....	2d proviso only.	33: 815.....	772.
June 25, 1910.....	J. Res. 10.....		36: 881.....	
5. June 21, 1931.....	689.....		48: 1185.....	871a.
6. Revised Statute.....	2317.....			1151.
Revised Statute.....	2118.....			1152.
7. June 6, 1874.....	23.....		18: 62.....	1153, 1154.
8. Jan. 28, 1879.....	29.....		30: 571.....	1155.
9. May 30, 1891.....	87.....		28: 84.....	1156.
10. Revised Statute.....	2440.....			1160.
Feb. 27, 1867.....	69.....	1.....	19: 241.....	
The following words only: "Section twenty-four hundred and fifty is amended by striking out in the fourth line the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior'".				
Revised Statute.....	2441.....			1162.
February 27, 1867.....	69.....	1.....	19: 241.....	
The following words only: "Section twenty-four hundred and fifty-one is amended by striking out, in the first and second lines, the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior'".				
Revised Statute.....	2156.....			1163.
Sept. 30, 1922.....	349.....		42: 837.....	
The words "....." and sections 2450, 2451, and 2456 be amended to read as follows:" and all words following in the Act.				
Revised Statute.....	2457.....			1164.
11. Mar. 3, 1891.....	561.....	7.....	26: 1098.....	1165.
12. Revised Statute.....	2471.....			1191.
Revised Statute.....	2472.....			1192.
Revised Statute.....	2473.....			1193.
13. July 14, 1960.....	P.L. 86-619.....	101-302(a), 303-304(a), 301-303.	74: 506.....	1361, 1362, 1363- 1363.
14. Sept. 26, 1970.....	P.L. 91-429.....		84: 685.....	1363a.
15. July 31, 1939.....	401.....	1,2.....	53: 1111.....	

9 SEC. 505. REPEAL OF LAWS RELATING TO RIGHTS-
 10 OF-WAY.—(a) The following statutes or parts of statutes
 11 are repealed insofar as they apply to national resource
 12 lands;

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statutes 2339.....				661.
The following words only: "and the right-of-way for the construction of ditches and canals for the purpose herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage."				
Revised Statutes 2340.....				661.
The following words only: " , or rights to ditches and reservoirs used in connection with such water rights, ".				
Feb. 26, 1897.....	335.		29: 569	664.
Mar. 3, 1899.....	427.	1.	30: 1233.	665, 938 (16 U.S.C. 525).
The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."				
Mar. 3, 1875.....	152.		18: 482	934-939.
May 14, 1898.....	299.	2-9.	30: 409	942-1 to 942-9.
Feb. 27, 1901.....	614.		31: 815	943.
June 26, 1906.....	3548.		34: 481	944.
Mar. 3, 1891.....	561.	13-21.	28: 1101.	946-949.
Mar. 4, 1917.....	184.	1.	39: 1197.	
May 28, 1926.....	409.		44: 688	950.
Mar. 1, 1921.....	93.		41: 1194.	952-955.
Jan. 13, 1897.....	11.		29: 484	
Mar. 3, 1923.....	219.		42: 1437.	
Jan. 21, 1895.....	37.		28: 633	951, 956, 957.
May 14, 1896.....	197.		29: 120	
May 11, 1898.....	292.		30: 404	
Mar. 4, 1917.....	184.	2.	39: 1197.	
Feb. 15, 1901.....	372.		31: 790	959 (16 U.S.C. 79, 822).
Mar. 4, 1911.....	238.		36: 1253.	961 (16 U.S.C. 5, 420, 523).
Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service".				
May 27, 1952.....	338.		66: 95	
May 21, 1896.....	212.		29: 127	962-965.
Apr. 12, 1910.....	155.		36: 296	966-970.

- 1 (b) Notwithstanding the provisions of subsection (a)
- 2 of this section, the following statute is repealed in its entirety:

Act of	Chapter	Section	Statute at Large	U.S. Code
Revised Statute 2477.....				43 U.S.C. 932.

Mr. MELCHER. Let us proceed again with your testimony, from the National Forest Products Association.

We heard from you a little less than a year ago, is that correct, on the same general proposition. Mr. MacCleery, please proceed. Without objection, Mr. MacCleery's entire statement, and the attachments which are the suggested amendments to the Subcommittee Print No. 1, will be made part of the record at this point. Hearing no objection it is so ordered. Mr. MacCleery, you may proceed as you see fit.

[The prepared statement of Douglas W. MacCleery follows:]

STATEMENT OF DOUGLAS W. MACCLEERY, FORESTER FOR THE NATIONAL FOREST PRODUCTS ASSOCIATION

Mr. Chairman and Members of the Committee:

I am Douglas W. MacCleery, forester for the National Forest Products Association, headquartered in Washington, D.C. I appreciate the opportunity to appear before you to give testimony on the "Public Land Policy and Management Act of 1975." (Subcommittee Print No. 1) and the "National Resource Lands Management Act of 1975" (H.R. 5224). NFPA is a federation of 26 regional and wood products associations representing the growers, manufacturers and wholesalers of wood products throughout the country.

Our industry is vitally concerned with timber management on all of our nation's commercial forest lands. We are equally concerned about achieving constructive public policies and programs affecting timber growth and harvest on Federal lands, on lands owned by the forest industry, and on non-industrial private lands. The forest products industry supports legislation which would provide the means for productive management of Federally owned commercial forest lands.

The bills before the Subcommittee could, with appropriate amendment, provide appropriate Congressional direction for the management of lands currently administered by BLM.

However, there are several major areas of concern with the bills as presently drafted. For each of these areas of concern we offer suggested amendments which are included at the end of my written testimony:

COMMENTS ON THE "PUBLIC LAND POLICY AND MANAGEMENT ACT OF 1975"
(SUBCOMMITTEE PRINT NO. 1)

1. *Definitions*

a. *Areas of Critical Environmental Concern.*—The concept underlying the phrase "areas of critical environmental concern" in Section 103(a) is not constructive. The implication is a negative one since the focus is directed toward restricting or limiting management practices to "prevent irreparable damage" rather than positive and encouraging those practices which will achieve desirable objectives, while at the same time, protecting all resource values. This section should be deleted.

Every area of land is unique in some respects—with its own combination of soils, geology, vegetation, climate and other characteristics. Management techniques must routinely be modified to take into consideration these unique characteristics on each unit of land. Rather than being given special legislative status, ecologically sensitive areas requiring special management considerations are best identified in the comprehensive land use planning required by Section 202 of the bill.

It is understood that the concept of "areas of critical environmental concern" was inserted in earlier versions of the bill to insure conformance with potential Federal land use legislation. Federal land use legislation has not been adopted, and even if it were in this Congress, it may not include this concept. Present bills before Congress dealing with land use contain the term "areas of critical State concern" rather than "areas of critical environmental concern." Because of this, we believe that this definition, and all references to it throughout the bill, are unnecessary and should be deleted.

b. *Multiple Use.*—The definition of "multiple use" in Section 103(c) is somewhat different than the definition currently applied by law to National Forest lands under the Multiple Use Sustained Yield Act of 1960. It is unnecessary

and confusing to distinguish between "multiple use" on National Forest lands and "multiple use" on BLM lands. There are sufficiently varied interpretations of what this term means as it is now, without compounding the problem with definitions for each of the two major land managing agencies charged with multiple use management.

2. *Treatment of Permits, Licenses, Leases, etc.*

Section 202(f)(2) would authorize revocation or suspension of any permit, license, lease or other instrument for a violation of any agency regulation or of any state or Federal air or water quality standard or implementation plan. This provision would inject extreme uncertainty into the continuance of Federally granted permits. The revision of air and water quality standards after the permit had been granted would subject the instrument to revocation upon finding of a violation of the new standard.

Permits and similar instruments granted by the government are normally long-term obligation and often involve a substantial investment by the permittee or lessee. This individual has a right to expect that the conditions under which the permit was granted will remain in effect until it is renewed, or at a minimum, if Federal standards are changed, that he will receive adequate compensation for the burden imposed by the new standard.

Section 202(f)(2) was written due to the legitimate concern that permits issued by the Federal Government comply with appropriate environmental standards. However, existing laws already provide penalties for non-compliance with applicable air and water quality laws and should be adequate to insure that environmental standards are met.

As now written, this section would authorize revocation of permits and similar instruments upon finding of even a minor violation of air and water quality standards. For instance, a power line right-of-way granted to a utility might be put in jeopardy upon finding that some of the emission control devices on motor vehicles owned by the utility and operating elsewhere were not operating properly. This is clearly undesirable.

3. *Rights-of-Way*

The authorities granted by Title V—*Rights of Way* are extended to the Forest Service, as well as the Bureau of Land Management. We question the desirability of including the Forest Service under this title. The primary objective of this bill is to consolidate basic authority for the Bureau of Land Management and to provide legislation clearly defining its mission. The Forest Service is already empowered to carry out all of the general authorities granted by Title V. To include the Forest Service under this section of the bill would serve no purpose and would only complicate those authorities under which the agency is presently operating.

We recommend that Title V of the bill be amended to remove the Forest Service from coverage under this title.

a. *Right-of-Way Grants.*—Section 501(a) gives the Secretaries of Agriculture and Interior the authority to grant rights-of-way over land administered by them, with the exception of lands designated as Wilderness. This is contrary to the provisions of the Wilderness Act of 1964, which provides that reasonable access to non-Federal lands within those areas cannot be denied. The primary reason for such language in the 1964 Act is to protect the non-Federal landowners' property rights and to prevent de facto public acquisition in Wilderness areas through denial of access over Federal lands. There is no question that when the public sector withdraws lands for Wilderness purposes it should either compensate the private owners or should allow for access to, and normal management of, that property.

The present wording would, in effect, constitute a situation in which private property as being "taken" by the Federal Government without just compensation, since the landowner is being denied access which is necessary for the development, use, and enjoyment of that land. This denial of access will result in a significantly lower market value for land. The exception of Wilderness areas should be deleted entirely.

b. *Disclosure of Plans and Other Information with Respect to Rights-of-Way.*—Section 501(b)(1) requires that a right-of-way applicant disclose any or all plans, contracts, agreements, or other information related to the use, or intended use, of the right-of-way and also requires the disclosure of various

information relating to all of the participants in the entity which applies for the right-of-way. This section should allow administrative flexibility regarding information required prior to granting a permit. While such rigid requirements may be appropriate with respect to grants for major utility rights-of-way, such as pipelines and power lines, it will be extremely cumbersome for the hundreds of forest road rights-of-way the BLM and Forest Service deal with each year. Where there is intermingled Federal and private ownership, it would require that forest landowners disclose all timber harvest and road construction plans on their own lands. This would be extremely impractical since these plans must remain flexible to meet changing conditions such as harvesting insect or fire-killed timber. At the very least, a disclosure provision should not apply to rights-of-way granted over National Forest lands or public lands to allow access to adjacent non-Federal lands for the purpose of forest management.

c. Time Limits on Rights-of-Way.—Section 504(b) deals with the time limits to be applied to rights-of-way. No specific reference is made to perpetual rights-of-way here, and it is implied that all rights-of-way under this bill will have some time limitation. The proposed amendment would permit agencies to enter into perpetual rights-of-way. Placing a time limitation on rights-of-way it receives is as unacceptable to forest landowners as it is to the Federal Government, in that the very long-term nature of capital investments in forest management (for tree planting, thinning, etc.) requires that the landowner gain permanent access to his land.

(Attached to my statement are additional specific suggested amendments to Title V concerning rights-of-way.)

4. *Cost-Share Road Program*

We are pleased to see that Section 502(a) provides BLM with a cost-share road program similar to that in effect on the National Forests. The objective of such a program is to foster and encourage the planning and development of a single road system, jointly owned, operated and maintained to serve the land management objectives of both public and private landowners involved. This way the costs of road construction and maintenance are shared, and these costs, as well as the resulting environmental impact, are much reduced over what they would have been had separate road systems been built.

The Forest Service was provided the authority for a cost-share road program by Public Law 88-657 (The National Forest Roads and Trails Systems Act). This authority has been instrumental in resolving many problems of road access to and across intermingled forest and private lands. Excellent cooperation has been achieved between the public and private landowners. The system is now valued in excess of \$100 million and is being expanded at the rate of \$10 million annually.

Some objections to the provision of a cost-share road program for BLM have been voiced on the basis that such road systems would not serve multiple use objectives. This is definitely not the case. The location and design of road systems under Section 502(a) must be mutually agreed to by BLM and the cooperating parties. These road systems are required to "meet the requirements for protection, development, and management of such lands and for utilization of the other resources thereof." This authority will be extremely useful to BLM which administers a considerable acreage of land involved in intermingled ownership patterns in several western states, principally Washington, Oregon, California, Idaho and Montana. The language in this section will be extremely valuable to insure that road systems are designed and built which achieve both public objectives and those of adjacent non-Federal landowners.

COMMENTS ON "NATIONAL RESOURCE LANDS MANAGEMENT ACT" (H.R. 5224)

Several of our concerns with H.R. 5224 are similar to those previously discussed with regard to Subcommittee Print No. 1. These general areas include: (1) the need to make the definition of "multiple use" contained in the bill consistent with that in the Multiple Use Sustained Yield Act of 1960; (2) the need to delete reference to "areas of critical environmental concern;" and (3) the need to provide flexibility in requirements that right-of-way applicants disclose or any or all plans, etc., related to the use of rights-of-way and in requiring the disclosure of various information relating to the participants in the entity applying for the right-of-way.

However, there are also significant differences between Subcommittee Print No. 1 and H.R. 5224 which we feel must be addressed. We have offered suggested amendments which we feel would improve H.R. 5224 which are included at the end of my written testimony. These comments will be directed to areas of concern not previously brought out in my testimony on the Subcommittee Print:

1. Reclamation

Section 101(2) authorizes the Secretary to require land reclamation as a condition of use for those engaged in "extractive or other" activities likely to cause significant disturbance of alteration of land. The language is not clear that this is intended to apply to land disturbing activities, such as strip mining. Timber harvest activities are not extractive because they are followed promptly by reforestation and forest renewal. This reforestation has historically been the responsibility of the forest landowner.

It is our understanding that the intention here is primarily to exercise authority over major extractions of non-renewable resources. That being the case, Section 101(b) should be amended so that it applies solely to extraction activities, not to timber harvest.

2. Modification of Permits Due to Changes in Land Classification

Section 103(d) would subject permits, leases, and licenses to modification due to changes in land classification. As explained previously, permits and similar instruments granted by the Federal Government are normally long-term obligations and often involve a substantial investment by the permittee or lessee. This individual has a right to expect that the conditions under which his permit was granted will remain in effect until the establishment renewal date, or at the very least, that he should be adequately compensated for economic loss resulting from any modification of the permit arising from a unilateral revision of the existing land classification by the Secretary. This entire subsection should be deleted.

3. Land Exchanges

While giving cursory recognition to land exchanges in Section 207 and 213, Title II does not give the attention to the land exchange program which we believe is needed. Land exchanges are treated only as method of adding lands to the public domain, but not as an appropriate method of developing more efficient management of existing public ownership. Full authority should be explicitly provided which would allow the exchange of lands or interest free from onerous conditions, such as strict land disposal criteria established under Section 202. BLM administrators should be allowed flexibility needed to exchange lands for purposes advantageous to the public, such as a consolidation of ownership and simplification of land management.

4. Conveyance of Mineral Interests

Section 208(a) allows the Secretary to convey mineral interests owned by the United States where the surface is in non-Federal ownership if he finds that there are no mineral values in the land, or that the reservation of the mineral rights in the United States is interfering with appropriate non-mineral development of the land and that such development is a more beneficial use of the land than mineral development. A new subsection should be added to this subsection which allows the Secretary to convey mineral interests owned by the United States where the surface is in non-Federal ownership if he finds that the surface ownership has been conveyed through exchange and that the other party of record will reciprocate with respect to mineral rights on lands he conveyed to the Federal Government.

5. Covenants on Documents of Conveyance

Section 209 requires the Secretary to attach covenants to any patent or other document of conveyance issued under the bill. This could conceivably encumber the lands conveyed to the point where they are, in fact, "public lands" with a private owner.

In effect, this section gives the Secretary the latitude of encumbering any lands or interest conveyed under the bill to whatever extent he so desires regardless of other provisions of the bill. If not deleted, this language could

destroy the effectiveness of any sales or exchange programs the Secretary may enter into under the bill. At one extreme, if he offers property for sale or exchange with highly restrictive environmental covenants and land use requirements, it will be difficult to find purchasers. It will also serve to greatly reduce the value of lands conveyed by the government. On the other hand, if the Secretary offers land with few or no covenants, all such conveyances will be subject to endless lawsuits claiming that he has violated the direction given him by Congress.

If the lands in question are determined to be suitable for disposal under the limited criteria of Section 202, the Federal Government should relinquish *all* of its rights, title, and interest to said lands. Further, in the case of land exchanges, it should be presumed that the total national resource land base will not change significantly and, thus, there is no need to subject such transactions to the provisions of this section. We urge that Section 209 be eliminated. The objective of this section is to insure that lands conveyed by the Federal Government are subject to proper land use and the public interests are protected. Land use plans developed by states and applicable state air and water quality and other environmental standards will normally insure that environmental protection objectives are met without unnecessarily encumbering lands conveyed by the Federal Government.

6. Reimbursement for Federal Administration Costs

Section 302(b) allows the Secretary to require that applicants for any agreement pertaining to the national resource lands reimburse the Federal Government for "extraordinary costs," including the costs of preparation of environmental impact statements and monitoring construction, operation, and maintenance. The broad language in this section is entirely inappropriate. It could result in the establishment of "user fees" to pay for administration of public programs which have been specifically implemented at the direction of Congress. The requirements that applicants be charged the administrative costs involved in the preparation of environmental impact statements under the National Environmental Policy Act is unprecedented. Those programs which provide public benefit should continue to be paid for by the public.

This subsection should be amended to allow BLM discretion when dealing with the administrative costs of land exchanges, easements exchanges, and cooperative cost-share road agreements. Applicants should not be required to pay BLM's share of administrative costs when such costs are for programs which are mutually beneficial.

7. Enforcement Authority

The enforcement authority provided by Section 307 fails to provide for any resolution of violations on an administrative basis. Every violation, whether intentional or unintentional, is delegated to the Courts. There should be some provision which allows the Secretary flexibility in gaining restitution for damages resulting from accidental or unintentional trespass during forest management operations, or other activities, on ownerships adjacent to national resource lands. Administrative flexibility should be provided to resolve the numerous innocent trespass incidents which occur frequently.

In addition, Subsection 307(a) should be changed to require conviction of a violation before subsection to penalty.

8. Cost-Share Road Program

H.R. 5224 has no provision for a cost-share road program as is provided by Section 502(a) of Subcommittee Print No. 1. As explained in our previous testimony, provision of such a cost-share road authority would be highly desirable.

A copy of Public Law 88-657, which forms the basis for the cost-share road program on the National Forests, is appended to my statement.

Thank you Mr. Chairman for this opportunity to comment on H.R. 5224 and the Subcommittee Print No. 1.

DOUGLAS W. MACCLEERY,
Forester,
National Forest Products Assn.

**SUGGESTED AMENDMENTS TO SUBCOMMITTEE PRINT NO. 1—"THE PUBLIC LAND
POLICY AND MANAGEMENT ACT OF 1975"—APRIL 7, 1975**

1. SECTION 103(a)—DEFINITION OF "AREAS OF CRITICAL ENVIRONMENTAL CONCERN"

On page 6, line 14 through line 21, delete the definition of "Areas of Critical Environmental Concern."

Delete reference to "areas of critical environmental concern" in all other sections of the bill.

Explanation

The concept underlying the phrase "areas of critical environmental concern" in Section 103(a) is not constructive. The implication is a negative one since the focus is directed toward limiting or prohibiting management practices to "prevent irreparable damage" rather than being positive and encouraging those practices which will achieve desirable objectives, while at the same time protecting all resource values. This section should be deleted.

Every area of land is unique in some respects—with its own combination of soils, geology, vegetation, climate and other characteristics. Management techniques must be modified to take into consideration these unique characteristics on each unit of land. Rather than being given special legislative statutes, ecologically sensitive areas requiring special management consideration are best identified in the comprehensive land use planning process required by Section 202 of the bill. It is during this planning process that such sensitive areas are properly identified and appropriate management practices developed to protect resource values. As presently worded, this definition could conceivably apply to the vast majority of national resource lands.

It is understood that the concept of "areas of critical environmental concern" was inserted in earlier versions of the bill to insure conformance with potential Federal land use legislation. Federal land use legislation has not yet been enacted, and, even if it were in this Congress, it may not contain this concept. In any case, bills presently before the Congress dealing with land use contain the term "areas of critical State concern". We believe that this definition, and all references to it throughout the bill, are unnecessary.

2. SECTION 103(c)—DEFINITION OF "MULTIPLE USE"

On page 7, line 7, delete everything following the semi-colon and beginning with the words "the use of some land . . ." through line 18 on page 7, substitute therefore the following:

" . . . that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output."

Explanation

The definition of "multiple use" in Section 103(c) differs in language but not in intent or scope from the definition in the 1960 "Multiple Use-Sustained Yield Act" applicable to National Forest lands. Language more nearly approximating the definition in the 1960 Act should be used in place of the current definition in the bill so as to reduce uncertainty and foster uniformity in the interpretation of policy for Federally owned lands. The suggested language will help to achieve this result.

3. SECTION 202(f) (2)—REVOCATION OF PERMITS FOR VIOLATION OF AIR OR WATER QUALITY STANDARDS

On pages 13 and 14, delete entire Section 202(f) (2).

Explanation

Section 202(f) (2) would authorize revocation or suspension of any permit, license, lease or other instrument for a violation of any agency regulation promulgated under the Act, or of any state or Federal air or water quality standard or implementation plan. This provision would inject extreme uncertainty into the continuance of Federally granted permits. Presumably, the revision of air and water quality standards after the permit had been granted, would subject the instrument to revocation upon finding of a violation of the new standard.

Permits and similar instruments granted by the government are usually long-term obligations, and often involve a substantial investment by the permittee or lessee. This individual has a right to expect that the conditions under which the permit was granted will remain in effect until it is renewed, or at a minimum, if Federal standards are changed, that he will receive adequate compensation for the burden imposed by the new standard.

In addition, Section 202(f) (2) as presently written, would authorize revocation of permits and similar instruments upon the finding of even a minor violation of air and water quality standards. For instance, a power line right-of-way granted to a utility might be put in jeopardy upon finding that some of the emission control devices on motor vehicles owned by the utility were not operating properly. This is clearly undesirable.

Section 202(f) (2) was written due to the legitimate concern that permits issued by the Federal Government comply with appropriate environmental standards. However, penalties provided by existing state and Federal air and water quality control regulations should be adequate to insure that these environmental standards are met.

4. TITLE V—RIGHTS-OF-WAY

The authorities granted by Title V—*Rights-of-Way* are extended to the Forest Service, as well as the Bureau of Land Management. We question the desirability of including the Forest Service under this title. The primary objective of this bill is to consolidate basic authority for the Bureau of Land Management and to provide legislation clearly defining its mission. The Forest Service is already empowered to carry out all of the general authorities granted by Title V. To include the Forest Service under this section of the bill would serve no purpose and would only complicate those authorities under which the agency is presently operating.

We recommend that Title V of the bill be amended to remove the Forest Service from coverage under this title.

5. SECTION 501 (a)—GRANTING RIGHTS-OF-WAY

On page 57, lines 7 and 8, delete the words “(except in each case land designated as wilderness)”.

Explanation

Section 501(a) gives the Secretaries of Agriculture and Interior the authority to grant rights-of-way over land administered by them, with the specific exception of land designated as Wilderness. This is contrary to the provisions of the Wilderness Act of 1974, which provides that reasonable access to non-Federal lands within Wilderness areas cannot be denied. The primary reason for such language in the 1964 Act is to protect the non-Federal land-owner's property rights and to prevent de facto public acquisition in Wilderness areas through denial of access over Federal lands.

There is no question that when the public sector withdraws lands for Wilderness purposes it should either compensate the private property owners affected or should allow for access to, and normal management of, that property. The language here would eliminate the protection afforded in these situations by the Wilderness Act, however tenuous that protection may have turned out to be as a practical matter.

The present wording would, in effect, constitute a situation in which private property is being “taken” by the Federal Government without just compensation, since the landowner is being denied access which is necessary for the development, use, and enjoyment of that land. This denial of access will result in a significantly lower market value for that land. The exception of Wilderness areas here should be deleted.

6. SECTION 501 (b) (1)—DISCLOSURE OF PLANS (WITH RESPECT TO RIGHTS-OF-WAY)

On page 58, lines 15 through 19, delete the words dashed through and insert the words underlined:

“(b) (1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose any or all those plans, contracts, agreements, or other information or material reasonably related to the use, . . .”

Explanation

Section 501(b) (1) requires that applicants for any right-of-way disclose all plans related to the use of the right-of-way. While such a requirement may be

appropriate with respect to some grants for utility rights-of-way, such as pipelines and power lines, it will be extremely cumbersome for the hundreds of forest road rights-of-way the departments deal with each year. It would require that forest landowners divulge all timber harvest and road construction plans on their own lands. Not only is this impractical since these plans must remain flexible to meet changing conditions, such as harvesting insect or fire-killed timber, but it is an infringement on the need for confidentiality that any company competing in a free market must maintain regarding plans for future operations.

The proposed amendment would limit information to disclosure of "those plans, contracts, agreements, or other information reasonably related to the use . . . of the right-of-way."

**7. SECTION 501(b) (2)—DISCLOSURE OF PARTNERS, SHAREHOLDERS, AND AFFILIATES
(WITH RESPECT TO RIGHTS-OF-WAY APPLICANTS)**

On page 59, line 1, delete the word "shall" and replace with "may".

Explanation

Section 501(b) (2) involves a mandatory requirement for detailed disclosure by partnerships, corporations, associations or other businesses applying for rights-of-way over public lands. Again, this very cumbersome requirement may not always be appropriate or necessary, particularly with respect to the hundreds of forest road rights-of-way which are handled by the Forest Service and the Bureau of Land Management every year. The Secretaries should be given some flexibility here, inasmuch as it is our understanding that this clause is primarily a holdover from the Alaska Pipeline Bill, and was originally intended to discover conflicts of interest among the major oil companies. Agencies should be given administrative discretion in this area.

8. SECTION 504(a)—SETTING BOUNDARIES OF RIGHTS-OF-WAY

On page 62, lines 23 and 24, delete the words "practicable" and insert "may be indicated by the proportionate values involved".

Explanation

Section 504(a) directs the Secretaries to specify the boundaries of all rights-of-way over public lands as precisely as "practicable." The term "practicable" has been interpreted by the courts to mean "possible" or "to the extent the existing technology permits." As written, this language leaves the Secretaries with no flexibility to weight the merits of each situation. The connotation of the word "practicable" is that the Secretary concerned must require extremely high standards for the engineering of all rights-of-way, whether they involve major public highways or secondary logging spur roads. The language should be amended to avoid unnecessary engineering, administrative, and compliance costs with respect to the many miles of forest roads constructed under right-of-way agreements on National Forest and BLM lands each year.

9. SECTION 504(b)—TIME LIMITS ON RIGHTS-OF-WAY

On page 63, beginning on line 10, delete the words dashed through and insert those underlined:

"(b) Each any right-of-way or permit granted or renewed pursuant to this section shall may be permanent if appropriate or may be limited . . . The Secretary concerned shall renew any non-permanent right-of-way or permit, in accordance with the provisions of this section, so long as the use for which the right-of-way same is required is continuing . . ."

Explanation

Section 504(b) deals with the time limits to be applied to rights-of-way. No specific reference is made to perpetual rights-of-way here, and it is implied that all rights-of-way under this bill will have some time limitation. The proposed amendment would permit agencies to enter into perpetual rights-of-way. Placing a time limitation on a right-of-way is unacceptable to forest landowners, in that the very long-term nature of capital investments in forest management (tree planting, thinning, etc.) requires that the landowner gain permanent access to his land. The Forest Service presently has authority to grant permanent rights-of-way easements over National Forest lands under P.L. 88-657, and receives

permanent road easements from adjacent non-Federal landowners. This includes the extensive road cost-share program on the National Forests between the Forest Service and intermingled forest landowners.

This is an extremely critical issue and should be considered a mandatory prerequisite to forest landowner support of this legislation.

10. SECTION 504(h)—REQUIREMENT FOR BONDS (WITH RESPECT TO RIGHTS-OF-WAY)

On page 66, line 2, insert the wording underlined:

"Where he deems it appropriate, . . . rule or regulation of the Secretary concerned. Provided, however, that such bond, or other security, shall not be considered appropriate when there is in existence a cooperative cost-share right-of-way program between the United States and the holder of a right-of-way.

Explanation

Section 504(h) directs the Secretary concerned to require a bond or other security for rights-of-way as he deems appropriate. Because of the unique nature of road cost-share agreements, they should be specifically excepted from this requirement.

11. SECTION 510—RIGHT-OF-WAY CONSTRUCTION TO STATE STANDARDS

On page 70, line 4, delete the words dashed through and insert the words underlined:

"Sec. 510. The Secretary concerned shall take into consideration and, to the extent practicable *practical*, comply with State standards for similar purposes for right-of-way construction, operation . . ."

Explanation

The use of the word "practicable" in Section 510—"State Standards" could potentially result in the requirement that forest road rights-of-way over the public lands be constructed to state highway standards, which would be totally uneconomical, environmentally destructive in many cases, and entirely inappropriate. The courts have interpreted the term "practicable" to mean "possible" or "to the extent the existing technology permits." To allow the necessary flexibility in judging the merits of each situation under this provision, the above amendments are offered.

SUGGESTED AMENDMENTS TO H.R. 5224—"THE NATIONAL RESOURCE LANDS MANAGEMENT ACT"—APRIL 7, 1975

1. SECTION 2(C)—DEFINITION OF "MULTIPLE USE"

On page 3, line 17, delete everything following the semi-colon and beginning with the words, "the use of some land . . ." through line 2 on page 4, substitute therefore the following:

". . . that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output."

Explanation

The definition of "multiple use" in Section 2(c) differs in language but not in intent or scope from the definition in the 1960 "Multiple Use-Sustained Yield Act" applicable to National Forest lands. Language more nearly approximating the definition in the 1960 Act should be used in place of the current definition in the bill so as to reduce uncertainty and foster uniformity in the interpretation of policy for Federally owned lands. The suggested language will help to achieve this result.

2. SECTION 2(e)—DEFINITION OF "AREAS OF CRITICAL ENVIRONMENTAL CONCERN"

On page 4, line 8 through line 14, delete the definition of "Areas of Critical Environmental Concern."

Delete reference to "areas of critical environmental concern" in other portions of the bill.

Explanation

The concept underlying the phrase "areas of critical environmental concern" in Section 2(e) is not constructive. The implication is a negative one, since the focus is directed toward restricting or limiting management practices to "prevent irreparable damage," rather than being positive and encouraging those practices which will achieve desirable objectives, while at the same time protecting all resource values. This section should be deleted.

Every area of land is unique in some respects—with its own combination of soils, geology, vegetation, climate and other characteristics. Management techniques must be modified to take into consideration these unique characteristics on each unit of land. Rather than being given special legislative status, ecologically sensitive areas requiring special management consideration are best identified in the comprehensive land use planning process required in Section 103 of the bill. It is during this planning process that such sensitive areas are properly identified and appropriate management practices developed to protect resource values. As presently worded, this definition could conceivably apply to the vast majority of national resource lands.

It is understood that the concept of "areas of critical environmental concern" was inserted in earlier versions of the bill to insure conformance with potential Federal land use legislation. Federal land use legislation has not yet been enacted, and, even if it were in this Congress, it may not contain this concept. In any case, bills presently before the Congress dealing with land use contain the term "areas of critical State concern". We believe that this definition, and all references to it throughout the bill, are unnecessary.

3. SECTION 101(2)—LAND RECLAMATION

On page 9, line 11, strike the words "extractive or other" and substitute the words "a mineral extraction or development."

Explanation

Timber harvest activities do not fall within the class of "an extractive or other activity likely to entail significant disturbance or alteration" of the land. Timber harvest activities are not extractive because they are followed promptly by reforestation and forest renewal. The definition of an activity requiring land reclamation should be limited to the extraction of minerals and like activities so that there is no confusion in this regard.

Further, reforestation of harvested areas has always been the responsibility of the landowner. This activity is quite different from reclaiming disturbed or altered land and should remain the responsibility of the administering agency. If it is the Committee's intent to alter this long established relationship between the landowner and the timber purchaser, the Committee should undertake a special review of reforestation practices on Federal lands to assure the best method or combination of methods is adopted for national resource lands.

4. SECTION 103(d)—CHANGES IN LAND CLASSIFICATION

On page 11, line 19, delete entire Subsection 103(d).

Explanation

Section 103(d) would subject permits, leases, and licenses to modification due to changes in land classification. Permits and similar instruments granted by the government are usually long-term obligations and often involve a substantial investment by the permittee or lessee. This individual has a right to expect that the conditions under which his permit was granted will remain in effect until the established renewal date, or at the very least, that he will be adequately compensated for any economic loss resulting from modification or cancellation of the permit arising from a unilateral revision of the existing land classification by the Secretary.

5. SECTION 202—DISPOSAL CRITERIA

On page 12, line 25, after the word "lands" insert "or interest therein." On page 13, line 16, insert a new Subsection 202(a)(4) as follows:

"(4) Disposal of such tract of national resource lands, or interests therein, under the exchange authority provided in section 213 will serve the public interest."

Explanation

While giving cursory recognition to land exchanges in Section 207 and 213, Title II does not give the attention to the land exchange program which we believe is needed. Land exchanges are treated only as a method of adding lands to the public domain, but not as an appropriate method of developing more efficient management of existing public ownership. Full authority should be explicitly provided which would allow the exchange of lands or interests free from onerous conditions such as the strict land disposal criteria established under Section 202. BLM administrators should be allowed flexibility needed to exchange lands for purposes advantageous to the public, such as the consolidation of ownership and simplification of land management.

6. SECTION 208(a)—CONVEYANCE OF MINERAL INTERESTS

Section 208(a) allows the Secretary to convey mineral interests owned by the United States where the surface is in non-Federal ownership if he finds that there are no mineral values in the land, or that the reservation of the mineral rights in the United States is interfering with appropriate non-mineral development of the land, and that such development is more a beneficial use of the land than mineral development. A new subsection should be added to this subsection which allows the Secretary to convey mineral interests owned by the United States where the surface is in non-Federal ownership, if he finds that the surface ownership has been conveyed through exchange and that the other party of record will reciprocate with respect to mineral rights on lands he conveyed to the Federal Government.

Under Section 208(c), the Secretary must require applicants for conveyance of mineral interests in Federal lands to pay for the cost of exploratory programs to that end. While this may be appropriate in cases of sales, it is not with respect to land exchanges. This subsection should be amended to allow the Secretary some flexibility with respect to exchanges, or exempt them entirely from this requirement.

7. SECTION 209—COVENANTS OF DOCUMENTS OF CONVEYANCE

On page 16, delete the entire Section 209.

Explanation

Section 109 requires the Secretary to attach covenants to any patent or other document of conveyance issued under the bill. This could conceivably encumber the lands conveyed to the point where they are, in fact, "public lands" with a private owner.

In effect, this section gives the Secretary the latitude of encumbering any lands or interests conveyed under the bill to whatever extent he so desires, regardless of other provisions of the bill. If not deleted, this language could destroy the effectiveness of sales or exchange programs the Secretary may enter into under the bill. At one extreme, if he offers property for sale or exchange with highly restrictive environmental covenants and land use requirements, it will be difficult to find purchasers. It will also serve to greatly reduce the value of the lands conveyed by the government. On the other hand, if the Secretary offers land with few or no covenants, all such conveyances will be subject to endless lawsuits claiming that he has violated the direction given him by Congress under this section.

If the lands in question are determined to be suitable for disposal under the limited criteria of Section 202, then the Federal Government should relinquish *all* rights, title and interest to said lands. Further, in the case of land exchanges, it should be presumed that the total national resource land base will no change significantly, and, thus, there is virtually no need to subject such transactions to the provisions of the section.

We urge that Section 209 be eliminated. The objective of this section is to insure that lands conveyed by the Federal Government are subject to proper land use and that public interests are protected. Land use plans developed by the states and applicable state air and water quality and other environmental standards will normally insure these objectives are met without necessarily encumbering lands conveyed by the Federal Government.

8. SECTION 213—ACQUISITION OF LAND

On page 18, line 20, revise the title of this section to read "Acquisition and Exchange of Land."

Explanation

The above title would more appropriately reflect the scope of this section.

9. SECTION 302—REIMBURSEMENT FOR FEDERAL ADMINISTRATION COSTS

Section 302(b) on page 21 allows the Secretary to require that applicants for any agreement pertaining to the national resource lands reimburse the Federal Government for "extraordinary costs," including the costs of preparation of environmental impact statements and monitoring construction, operation, and maintenance, etc. The broad language in this section is entirely inappropriate. It could result in the establishment of "user fees" to pay for the administration of public programs which have been specifically implemented at the direction of Congress. The requirement that applicants be charged the administrative costs involved in the preparation of environmental impact statements under the National Environmental Policy Act is unprecedented. Those programs which provide public benefits should continue to be paid for by the public.

This subsection should be amended to allow BLM discretion when dealing with the administrative costs of land exchanges, easement exchanges, and cooperative cost-share road agreements. Applicants should not be required to pay BLM's share of administrative costs when such costs are for programs which are mutually beneficial.

10. SECTION 307—ENFORCEMENT AUTHORITY

The enforcement authority provided by Section 307(a) on page 26 fails to provide for any resolution of violations on an administrative basis. Every violation, whether intentional or unintentional, is delegated to the courts. There should be some provision which allows the Secretary flexibility in gaining restitution for damages resulting from accidental or unintentional timber trespass during forest management operations. The Secretary should be given the authority to settle this type of trespass either by requiring the trespasser to pay fair market value for trees cut on national resource lands or by accepting in exchange trees or logs of like value. Because of intermingled private and Federal lands, coupled with poor boundary markings, unintentional trespass can easily occur. Adjacent private landowners may trespass on government lands while timber sale contractors operating on national resource lands may trespass on private lands. Authority for administrative treatment of such situations should be provided for.

In addition, Section 307(a) should be changed to require conviction of a violation before subsection to penalty.

11. SECTION 401(b)(1)—DISCLOSURE OF PLANS

On page 30, beginning on line 23, delete the words dashed through and insert the words underlined:

"(b)(1) The Secretary shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose any or all those plans, contracts, agreements or other information or material reasonably related to the use, . . ."

Explanation

Section 401(b)(1) requires that applicants for any right-of-way disclose all plans related to the use of that right-of-way. While such a requirement may be appropriate with respect to some grants for utility rights-of-way, such as pipelines and power lines, it will be extremely cumbersome for the numerous forest road rights-of-way the BLM deals with each year. It would require that forest landowners divulge all timber harvest and road construction plans on their own lands. This would be extremely impractical since these plans must remain flexible to meet changing conditions, such as harvesting insect or fire-killed timber.

The proposed amendments would limit information to disclosure of "those plans, contracts, agreements, or other information, reasonably related to the use . . . of the right-of-way . . ."

12. SECTION 403(a)—BOUNDARIES OF RIGHTS-OF-WAY

On page 33, Line 3, delete the word "practicable" and insert "may be indicated by the proportionate values involved".

Explanation

Section 403(a) directs the Secretary to specify the boundaries of all rights-of-way over public lands as precisely as "practicable". The term "practicable" has been interpreted by the courts to mean "possible" or "to the extent the existing technology permits." As written, this language leaves the Secretary with no flexibility to weight the merits of each situation. The connotation of the word "practicable" is that the Secretary concerned must require extremely high standards for the engineering of all rights-of-way, whether they involve major public highways or secondary logging spur roads. The language should be amended to avoid unnecessary engineering, administrative, and compliance costs with respect to the many miles of forest roads constructed under right-of-way agreements on the public lands each year.

13. SECTION 403(f)—REIMBURSEMENT FOR ADMINISTRATIVE COSTS

On page 35, line 12, after the word "*rights-of-way*" insert the following: "Provided, however, That such costs need not be reimbursed in any situation where there is in existence a cooperative cost-share right-of-way program between the United States and the holder of a right-of-way. *And provided further*, That rights-of-way may be granted, issued . . ."

Explanation

Under Section 403(f), holders of rights-of-way must reimburse the United States for "all reasonable administrative and other costs" the agency has incurred in processing the application and in monitoring construction. Under a cost-share road program, the Federal agency and the private owner share the tasks of road design and construction. These are divided approximately equally between them. Thus, it would be inequitable for holders of rights-of-way under the cost-share program to be required to pay the government for its administrative costs since they are also paying for those costs on their own lands. The best solution is to allow the present arrangement to prevail, i.e., each party will be responsible for the costs individually incurred as long as the total workload performed by each remains approximately equal.

14. SECTION 409—COMPLIANCE WITH STATE STANDARDS

On page 40, line 1, after the word "standards," insert the words: "for similar purposes . . ."

Explanation

Section 409—"State Standards" could potentially result in the requirement that forest road rights-of-way over the public lands be constructed to state highway standards, which would be totally uneconomical, environmentally destructive in many cases, and entirely inappropriate.

To allow the necessary flexibility in judging the merits of each situation under this provision, the above amendment is offered.

NATIONAL FOREST ROADS AND TRAILS SYSTEMS ACT

ACT OF OCTOBER 13, 1964 (78 STAT. 1089; 16 U.S.C. 532-538)

Sec. 1. The Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services. (16 U.S.C. 532)

Sec. 2. The Secretary is authorized, under such regulations as he may prescribe, subject to the provisions of this Act, to grant permanent or temporary

easements for specified periods or otherwise for road rights-of-way (1) over national forest lands and other lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it. (16 U.S.C. 533)

Sec. 3. An easement granted under this Act may be terminated by consent of the owner of the easement, by condemnation, or after a five year period of non-use the Secretary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within sixty days after receipt of the notice, a hearing in accordance with such rules and regulations as may be issued by the Secretary. (16 U.S.C. 534)

Sec. 4. The Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof, and for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of national forest timber and other products, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed the purchaser of the national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate. (16 U.S.C. 535)

Sec. 5. Copies of all instruments affecting permanent interests in land executed pursuant to this Act shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from the public domain shall be furnished to the Secretary of the Interior. (16 U.S.C. 536)

Sec. 6. The Secretary may require the user or users of a road under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a road to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded. (16 U.S.C. 537)

Sec. 7. Whenever the agreement under which the United States has obtained for the use of, or in connection with, the national forests and other lands administered by the Forest Service a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor. (16 U.S.C. 538)

STATEMENT OF DOUGLAS W. MacCLEERY, NATIONAL FOREST PRODUCTS ASSOCIATION, ACCOMPANIED BY JOHN F. HALL, VICE PRESIDENT, FORESTRY AFFAIRS, NATIONAL FOREST PRODUCTS ASSOCIATION; AND WALTER JAENICKE, ASSISTANT VICE PRESIDENT, GOVERNMENT AFFAIRS, NATIONAL FOREST PRODUCTS ASSOCIATION

Mr. MacCLEERY. Thank you, Mr. Chairman. I would like to summarize my comments, if I may.

I am Doug MacCleery, forester for the National Forest Products Association. Appearing with me today is John Hall, vice president for forestry affairs of the NFPA. We appreciate the opportunity to appear before you to give testimony on the Public Land Enforcement and Management Act.

NFPA is a federation of 26 regional and wood products associations representing the growers, manufacturers, and wholesalers of wood products throughout the country. Our industry is vitally concerned with timber management on all of our ownerships, and is equally concerned with achieving constructive public policies and programs affecting timber growth and harvest on Federal lands, on lands owned by the forest industry, and nonindustrial private lands.

The bills before the subcommittee could, with appropriate amendment, provide a needed congressional direction for the management of lands currently administered by BLM. However, there are several major areas of concern with the bills as presently drafted. For each of these areas, we offer suggested amendments which are included at the end of my written testimony.

I will first comment on Subcommittee Print NO. 1, the Public Land Policy and Management Act. The concept underlying the phrase, areas of critical environmental concern, in section 103(a) is not constructive, because the implication here is a negative one. The focus is directed toward restricting or limiting management practices to prevent irreparable damage, rather than positive and encouraging those practices which will achieve desirable objectives, while at the same time protecting all resource values. We feel this section should be deleted. It is, as presently worded, this definition could apply to the vast majority of BLM lands. It is understood that this definition was inserted in earlier versions of the bill to assure conformance with potential Federal land use legislation.

Present bills before the Congress dealing with land use contain, in turn, areas of critical state concern rather than areas of critical environmental concern. Because of this, we believe that this definition, and all references to it throughout the bill, are unnecessary, and should be deleted.

On the definition of multiple use, in section 103(c), this definition is somewhat different than the definition currently applied by law to National Forest lands under the Multiple Use Sustained Yield Act of 1960. It would seem unnecessary and confusing to distinguish between multiple use on National Forest lands and multiple use on BLM lands. There are sufficiently varied interpretations of

what this term means as it is now without compounding the problem with definitions for each of the two major land managing agencies charged with multiple use management.

On the treatment of permits, licenses, and leases, section 202(f) (2) would authorize revocation or suspension of any permit, license, lease, for a violation of any agency regulation or of any State or Federal air or water quality standard. This provision would inject extreme uncertainty into the continuance of federally granted permits. Presumably, the revision of air and water quality standards after the permit had been granted would subject the instrument to revocation upon finding a violation of the new standard. In addition, even a very minor violation of it would subject the permit to revocation.

The permits and similar instruments granted by the Government are normally long-term obligations, and often involve a substantial investment by the permittee. This individual has a right to expect that the conditions under which the permit was granted will remain in effect until it is renewed, or at a minimum, if Federal standards are changed, that he will receive adequate compensation for the burden imposed by the new standard. This section was written due to the legitimate concern that permits issued by the Federal Government comply with appropriate environmental standards. However, existing laws already provide penalties for noncompliance with air and water quality laws, and should be adequate to insure that environmental standards are met.

The subject of rights of way—the authorities granted by title V are extended to the Forest Service, as well as to the Bureau of Land Management. We question the desirability of including the Forest Service under this title. The Forest Service is already empowered to carry out all the general authorities granted by title V. To include the Forest Service under this section would serve no purpose, and would only complicate those authorities under which the agency is presently operating.

Section 501(b) (1) requires that the right-of-way applicant disclose any or all plans related to the use of the right-of-way, and also requires the disclosure of various information relating to all of the participants in the entity which applies for the right-of-way. Administrative flexibility should be permitted here regarding information required prior to granting a permit. The rigid requirements of this section would be extremely cumbersome for the hundreds of forest road rights-of-way the BLM and Forest Service deal with each year. Where there is intermingled Federal and private ownership, it would require that forest landowners disclose all timber harvest and road construction plans on their own lands. This would be extremely impractical, since these plans must remain flexible to meet changing conditions such as harvesting insect or fire-killed timber.

On the subject of time limits on right-of-way, no specific reference is made to section 504(b), to perpetual rights-of-way, and it is implied that all rights-of-way under this bill will have some time limitation. The Federal Government customarily demands perpetual rights-of-way when the public obtain easements of a private land. Placing a time limitation on rights-of-way a private landowner re-

ceives is just as unacceptable to him as it is to the Federal Government. The very long-term nature of capital investment in forest management for such things as tree planting and thinning requires that the landowner gain permanent access to his land. It is very important that the Federal Government be given the authority to grant permittees.

On the subject of cost-share road program, we are pleased to see that section 502(a) provides BLM with a cost-share road program similar to that in effect on the national forests. Such a program will foster and encourage the planning and development of a single road system, jointly owned, operated, and maintained to serve the land management objectives of both BLM and the private landowners involved. This way, the costs of road construction and maintenance are shared, and these costs, as well as the resulting environmental impact, are much reduced over what they would have been had separate road systems been built.

Some objections to the provision of a cost-share road program have been voiced, on the basis that such road systems would not serve multiple-use objectives. This is definitely not the case. The location and design of road systems under section 502(a) must be mutually agreed to by BLM and the cooperating parties. The language in this section will be extremely valuable to insure that the road systems are built which achieve both public objectives and those of adjacent, non-Federal landowners.

I would now like to make a few comments on H.R. 5224, the National Recourse Lands Management Act. Several of our concerns with this bill are similar to those previously discussed with regard to Subcommittee Print No. 1. However, there are also significant differences between the two bills which we feel must be addressed. Portions of H.R. 5224 are similar to H.R. 5441, which was considered by the subcommittee last year, and on which NFPA testified. The following comments will be directed to areas not previously brought out in my testimony on Subcommittee Print No. 1, or our testimony on H.R. 5441 on April 26, 1974.

Section 103(d) would subject permits, leases and licenses, and similar instruments, to modification due to changes in land classification. As previously explained, the individual who holds a permit or similar instrument, often involving a substantial investment, has a right to expect that the conditions under which this permit was granted will remain in effect until the established renewal date; or at the very least, that he will be adequately compensated for economic loss resulting from any modification of the permit arising from a unilateral revision of the existing land classification by the Secretary. We feel this entire subsection should be deleted.

On the subject of land exchanges, while giving cursory recognition to land exchanges in section 207 and 213, title II does not give the attention to the land exchange program which we believe is needed. Land exchanges are treated only as a method of adding lands to the public domain, but not as an appropriate method of developing more efficient management of existing public ownership. BLM administrators should be allowed the flexibility needed to exchange lands for purposes advantageous to the public such as consolidation of ownership and simplification of land management.

Section 209 requires that the Secretary attach covenants to any patent or other document of conveyance issued under the bill. This is undesirable, and if not deleted, this language would destroy the effectiveness of any sales or land exchange programs the Secretary may enter into under the bill. At one extreme, if he offers property for sale or exchange with highly restrictive environmental covenants and land use requirements, it will be difficult to find purchasers. It will also serve to greatly reduce the value of lands conveyed by the Government. On the other hand, if the Secretary offers land with few or no covenants, such conveyances will be subject to endless lawsuits claiming that he has violated the direction given him by Congress.

The objective of this section is to insure that lands conveyed by the Federal Government are subject to proper land use, and that public interest are protected. Land use plans developed by States and applicable air and water quality and other environmental standards will normally insure that environmental protection objectives are met, without unnecessarily encumbering lands conveyed by the Federal Government.

H.R. 5224 has no provision for a cost-share road program, as is provided by section 502(a) of Subcommittee Print No. 1. As explained in our previous testimony, provision of such a cost-share road authority would be highly desirable. A copy of Public Law 88-657, which provides the basis for the cost-share road program on the national forests, is appended to my statement.

Thank you, Mr. Chairman, for this opportunity to comment on subcommittee print No. 1 and H.R. 5224.

Mr. MELCHER. Thank you, Mr. MacCleery. Where do you reside, here in Washington?

Mr. MACCLEERY. Yes.

[Pause.]

Mr. MELCHER. When you speak in your testimony about section 202, which would revoke, suspend, or prevent a lease for violation of regulations regarding Federal air or water quality standards, is this a pretty firm position of your organization? You know, it seems obvious to me that if you write legislation—if you are going to be practical about it, you are going to certainly make the Federal agencies adhere to the water and air quality standards. I cannot see any quarrel with that. Why would your group have you testify against that?

Mr. MACCLEERY. Well, there is compliance with normal environmental quality standards by Federal agencies. It is normal procedure, as it is now.

Mr. MELCHER. Well, it is an area that you have extreme problems with, is it not, in meeting this; members of your federation, of your association, are struggling and have extreme problems with those standards, do they not?

Mr. HALL. If I may, Mr. Chairman, the concern primarily here—

Mr. MELCHER. No, I want an answer to the question. Are not members of your association having extreme problems with some areas in meeting those standards?

Mr. HALL. Not with respect to activities on the public lands. And my point I would like to make here—

Mr. MELCHER. Let us just answer the question. Let us not refer to public lands. Are not some of the members of the association having an extreme problem meeting the air and water quality standards established by the Federal Government?

Mr. HALL. No, sir, we are not.

Mr. MELCHER. I am glad to hear that.

Now, are the plants out in Missoula members of your association?

Mr. HALL. The members of our organization are the manufacturers of solid wood products, and we represent the folks who grow, harvest, and process timber into lumber, plywood, and other solid wood products. But on the solid wood side of the industry, there is not as yet a great deal of problem meeting current applicable Federal-State water quality/air quality regulations.

Mr. MELCHER. You do not have any membership in Missoula?

Mr. HALL. Yes, sir, there is membership in Missoula. The members that we represent in Missoula are those who are the producers of lumber, plywood, and other solid wood products. My understanding is that the Missoula problems concern primarily the pulp and paper segment of the industry.

Mr. MELCHER. Well, there is a lot of—all right.

I hope that your members are not having any problems. But if they are not having any problems, then why would you want us to ignore what is the Federal air and water quality standards, and not tie it into this bill?

Mr. HALL. You should not ignore the problem of tying into this bill is that action by a company several thousand miles away, under this reading here, could endanger or involve revocation of an access right to private property or to national resource lands, totally unrelated to the law which is allegedly being violated, or which a final judgment of violation has been obtained in another jurisdiction in another area of the country.

Mr. MELCHER. Well, you would be able to go to court if you were mistreated.

Mr. HALL. Certainly. What we would suggest here is that the revocation bear some—that is, the reason for revocation—bear some relationship to the actual permit right-of-way lease, or other interest that is conveyed by the Federal Government.

Mr. HALL. It would be inappropriate to condition a right-of-way, let us say, for a mile across BLM lands in Oregon to reach private operating areas. Or we use the extreme example here of a failure from the emission control device on the delivery truck in New York City. That is an extreme example.

Mr. MELCHER. I think, Mr. Hall, it is not only extreme, I think it is a little ridiculous.

Mr. HALL. I do, too. But the language here, when it says, any violation of any regulation—

Mr. MELCHER. Now, Mr. Hall, you and Mr. MacCleery are the only witnesses we have today. But we do not happen to have enough time for that sort of posturing.

Mr. HALL. No. The point being, if the violation were something related to the terms, the conditions, the uses for which the permit itself is being used, the objection could be far less. In fact, we would probably support that type of condition.

Mr. MELCHER. Well, I just think the reference—your entire reference is ill-advised in the overall impact of your statement. But I will pass on to other things dealing with right-of-way land grants issued by the Secretary of Agriculture and the Secretary of Interior.

Now, you would recommend that we just forget about Agriculture, just forget about the Forest Service and rights-of-way, and you seem to indicate that that hodgepodge of laws that they lean on to grab all the various preventions that they do, is adequate. Well, we found in previous testimony that it is inadequate; previous examinations very much need to be updated. In fact, the Forest Service, and the Forest Products Association, both recommend that we do not touch rights-of-way on national forests. It causes me to really wonder about the complacency of the administration of our national forests, and the—one of the heavy users of our national forests.

Now, this subcommittee and the full committee have always been convinced that—or wedded to the idea—that multiple use on public lands was certainly in the best interests of the country. But we are not finding, frankly, a heavy criticism last year of this year, from other users of the national forests, with including the right-of-way section. We seem to have convinced them that that is not necessary.

Mr. HALL. The other users are in an entirely different position than the segment of the industry we speak for on this segment of the bill. Here, we are representing the owners of intermingled and adjacent lands, lands with similar characteristics and, for a large part, similar management objectives. And in this stage, we are looking for a single-road system which will serve the needs and objectives of the national forest system and of the adjacent private landowners.

Mr. MELCHER. Well, of course, when we talk about rights-of-way, we are talking about electric power, we are talking about pipelines of various kinds, we are talking about all sorts of things. If you had a positive suggestion to make on rights-of-way, I think that this committee would be very receptive. I seem to recall that we took a positive recommendation from you in particular last year, Mr. Hall, and incorporated it in the bill. However, now you are telling me that you have more interest—that your people have more interest in rights-of-way than every other user but I think you are referring only to most, are you not? You are not just referring to powerlines, or telephone lines, or pipelines, are you?

Mr. HALL. We confine our recommendations to the road system that will best serve these interests, and we do commend the subcommittee for including in its print a language which will extend this type of operation to the Bureau of Land Management.

Mr. MELCHER. BLM, yes. Now, we included that section, and I think you helped us very significantly last year in drawing that to our attention. But when you come to the point of recommending that you just delete the entire section dealing with rights-of-way—

Mr. HALL. No, sir. We recommend that the Forest Service be deleted from that section, not that the BLM—

Mr. MELCHER. That is what I am referring to. You recommend to delete the entire section of rights-of-way, as it refers to Forest Service, ignoring the fact that there are all sorts of other permits for rights-of-way that are disclosed. Now, if you had some positive sug-

gestions on how to improve rights-of-way on National Forest and BLM lands by updating the rights-of-way dealing with roads and access to private property—because that seems to be the main point—I think you would do this committee a great deal of good.

Mr. HALL. Perhaps I have been a bit too parochial or conventional in the approach. We were focusing on the road statement, and we will come back to the committee with some recommendations that would—

Mr. MELCHER. I am sure our staff would also appreciate your briefing, or justifying, the statement that Mr. MacCleery has made that somehow, by this act on rights-of-way, we are going to nullify a portion of the 1964 Wilderness Act. I do not think we do that, but if you have a brief to convince our staff that we are doing that, and that we are changing what is granted in the Wilderness Act in holding to private property in this area, we would be most grateful to you. You are still going to be able to get there and have access. You are still going to have the opportunity to utilize their land as other citizens are. We want to make that correction if—

Mr. HALL. We welcome the opportunity to work with the staff on that.

Mr. MELCHER. Thank you very much. The gentleman from New Mexico?

Mr. RUNNELS. I have no questions.

Mr. MELCHER. The gentleman from Oregon? I guess I am the only one that wants to be recognized.

Mr. HALL. Thank you for your consideration.

Mr. MELCHER. We appreciate your advice on this. We will be very much indebted to you if you could help us on the rights-of-way as it refers to roads, because that is all I think you are dealing with. But we would rather have a more positive side. The Forest Service is going to be in here on rights-of-way. I do not think it should be, but we have covered a much broader scope than what you testified first. And the point on wilderness—if you are correct, if Mr. MacCleery's testimony is correct—our section is somehow nullifying the property owner's rights to the wilderness area. We certainly would not know that.

Does the staff have any questions?

Mr. SHAFER. I do not think so.

Mr. MELCHER. Thank you very much.

Now, this concludes our hearings this morning. I would like to continue just briefly, for a few minutes, with staff. It is open to the public. You are welcome to stay.

I would like just to discuss briefly where we are at with this bill. We are going to have another 2 or 3 days of hearings. Friday of this week, we have a whole long list of witnesses, most of which could not testify today. Is that correct, Sharon?

Ms. COCKAYNE. Yes, sir.

Mr. MELCHER. I think we are going to have 11 or 12 different environmental groups listed.

Ms. COCKAYNE. Yes.

Mr. MELCHER. Well, seven or eight of them are panels, but several of them are separate. Is that correct?

Ms. COCKAYNE. Yes.

Mr. MELCHER. Well, it will be impossible on Friday to conclude that testimony in 2 hours, will it not?

Ms. COCKAYNE. I would say so, yes.

Mr. MELCHER. There would be no way of doing it. So we will anticipate, if possible, extending over into Friday afternoon, or re-scheduling them for Monday or Tuesday of next week. Have we requests other than that?

Ms. COCKAYNE. No. This is all that I have. The people that called in have been scheduled.

Mr. MELCHER. Well, at the conclusion of this, are we calling back either the Forest Service or the BLM?

Mr. SHAFER. Not to my knowledge.

Mr. SENZEL. They did express the desire to make a specific suggestion.

Mr. MELCHER. Yes, we understand that. Would it be staff's suggestion that we try to start a markup next week, or—

Mr. SHAFER. Mr. Chairman, I think it would be better for our purposes if we had at least a week in between to get these things in order. I think it will be more productive for the members if we have that time to revise and possibly prepare some papers and some briefings, for you. Then when we met, it would be more productive.

Mr. MELCHER. Now, we have gone over—we noted Mr. Santini's strong regard for modifying the proposals we have in law enforcement for BLM. We have, I suspect by now, some definite proposals for BLM on grazing fees, or have they not come up yet?

Mr. SENZEL. Yes. I have some material, not formal but informal.

Mr. MELCHER. And this is a formula that has two factors, the cost of doing business and the price of cattle. Is the cost of doing business for many of us, including the gentleman from New Mexico and the gentleman from Arizona, Mr. Steiger, who is not here, and others on the subcommittee—is the cost of doing business a figure that the Department of Agriculture publishes monthly? This is extremely important that we iron out, and have a firm and strong section on grazing fees, or our constituency will have a lot of criticism of us now.

Mr. SENZEL. I understand it is monthly.

Mr. MELCHER. And does it have any bearing on the 11 Western States?

Mr. SENZEL. The figures of the United States on the whole.

Mr. MELCHER. It is for the United States as a whole? Now, I do not know that that causes us any problem.

Mr. ROCK. I think they regionalize.

Mr. MELCHER. Well, that would be more helpful, because grazing is pretty much in the 11 Western States.

I notice that my alma matter, Ohio State University, has prepared a paper, and I am not sure who they prepared it for—maybe the Senate Committee—on the livestock industry, 11 Western States; and I am going to ask that that paper be provided. It may be of some interest.

Mr. ROCK. Are you talking about the report of the Appropriations Committee?

Mr. MELCHER. No, it is a different report. Well, wait a minute; was it for—

Mr. ROCK. Senate Appropriations Committee. There is one on the—

Mr. MELCHER. That is from Interior. This is from Ohio State University. I will secure a copy of it. I think it was within the last year. It may be of help to us.

Now, if we could—go ahead, Mr. Runnels.

Mr. RUNNELS. I was just going to say, if you include it, make sure the staff gets a copy of it.

Mr. MELCHER. Go ahead.

Mr. WEAVER. I would like hearings as soon as the subcommittee can hold them on the log export bill I have introduced.

Mr. SHAFER. I do not believe at this time that we have requested reports. That would be the first thing to do. I have talked informally to Agriculture and to Interior, and they have advised me on an informal basis that they could probably get the reports out. But I do not think they are going to get them up, unless we push them on it, unless we set a hearing.

Mr. WEAVER. That is what I would like to know.

Mr. SHAFER. In other words, I think we are going to have to force a report out of them by setting a hearing.

Mr. WEAVER. They have copies of the bill?

Mr. SHAFER. Yes. I have talked to them on that.

Mr. WEAVER. And I would like to have it as soon as possible. Next week would be fine with me.

Mr. SHAFER. I think that would be pushing them quite a bit.

Mr. WEAVER. All right.

Mr. MELCHER. It is not a bill that could be incorporated in this hearing?

Mr. SHAFER. No, this is entirely separate.

It is a joint referral, I think, to this committee, and to International Relations.

Mr. WEAVER. One of the cosponsors is on that Committee on International Affairs, and they could conceivably hold a hearing rapidly on that. Could they not dovetail? It is a concurrence, too.

Mr. SHAFER. Yes. It will be entirely up to the Chairman. We can have separate hearings, or we can have joint hearings.

Mr. WEAVER. Well, that would be fine. But I understand that, as it is a concurrent disposal among committees, International Relations Committee, whose subcommittee would that be under?

Mr. SHAFER. I do not know. It is in public lands here.

Mr. WEAVER. Well, do you not think the bill is germane to this act?

Mr. SHAFER. Yes, I think it is germane in part. But I do not think, because it goes far beyond BLM lands, or Forest Service lands, in some aspects; I do not think it would be proper to incorporate it into this bill.

Mr. WEAVER. In what way does it go far beyond? This bill includes public lands.

Mr. MELCHER. Well, if it has anything to do with export control, which is on imports and export, it is not even a subject that this

committee can properly assume. The problem will not be in the full committee or the subcommittee, the problem will be in the other committee, unless you have some assurance that they are going to accept the bill, and hold hearings on it, and have some interest in moving on the bill. There is no point in us concerning ourselves, because we will not have the judgment on it.

Mr. WEAVER. Representative Bonker felt that he wanted hearings in this committee first, and then he would put in an appearance.

Mr. MELCHER. Representative Bonker? Well, I would suggest that you introduce it in that committee, and see how they accept it. The management of public lands is clearly our responsibility.

Mr. WEAVER. This is essentially the public lands bill. What it does is deal with timber on public lands and how it sets certain requirements for the bidding on public lands.

Mr. MELCHER. I think that the point the House is going to consider, if it is an export control bill, is export control provisions other than the management of it. Because simply, management of it we will incorporate in this bill. However, I think you had better be well aware that Mr. Dellenback was extremely careful in removing the Oregon lands from this bill. He did not want it in there.

Mr. SHAFER. That is not in there. The O. & C. lands are generally exempt from this bill.

Mr. MELCHER. Well, would not the export control features be applied to O. & C.?

Mr. SHAFER. Yes, sir.

Mr. MELCHER. Well, therefore, it would not be anything we wanted in this bill. Well, we cannot have it in this bill. The export control feature is clearly going to be solved in the other committee. I would suggest that you find out from that committee if they are really interested in doing something. If they are, we will talk to them.

Mr. SHAFER. Well, the first thing to do, Mr. Chairman, is to get the reports from the administration as quickly as we can, see what their position is. I suspect that they may have a negative position on it.

Mr. WEAVER. But we could do that best by setting the hearing date, as you say.

Mr. SHAFER. That is one way, certainly, to get it.

Mr. WEAVER. Mr. Chairman, there is now a main body of my bill that is law—at least, a part of the appropriations bill. It expires on the 30th of June, and that is my urgency. We have to have something to replace that.

Mr. MELCHER. Now again, this committee—if what expires is what, the export control?

Mr. WEAVER. Yes.

Mr. MELCHER. We are not going to make that decision in preparation for submitting it to the House. That decision will be made by the other committee, unless they are willing to do something about it. Frankly, we have no power.

Mr. WEAVER. This committee has the same jurisdiction that International Affairs has.

Mr. MELCHER. No.

Mr. SHAFER. It is a joint referral.

Mr. MELCHER. I understand that. But the reason we have some jurisdiction over it is, I think it refers to management of public

lands. But we do not have any jurisdiction over the key issue, export control, if I understand the bill.

Mr. WEAVER. It is a split jurisdiction. Both committees have to act, and I am saying, let us have this committee act.

Mr. MELCHER. We have a lot of things to do. We cannot continue involved. I do not want to dampen your spirit on the bill, but—

Mr. WEAVER. This is an urgent matter, Mr. Chairman.

Mr. MELCHER. I am sure that by June 30, if that is the deadline, that is very urgent, because it is already April. But I do not think that the decision on whether that feature can be resolved is in this committee, in this subcommittee or in the full committee.

Mr. WEAVER. Mr. Chairman, it has got to be passed out by both committees. So therefore, this committee must act.

Mr. MELCHER. I suspect that the key feature of it—that if we passed out, or were able to hold on the House floor, something that was referred to management on public lands—that that would not serve any purpose at all. What the real purpose is, that we can deadline on June 30, on the export—

Mr. WEAVER. What I am going to work for is to have the bill passed out of this subcommittee, the Interior Committee, and passed out of the International Affairs Committee also. It requires both.

Mr. MELCHER. I will be glad to accommodate you if there is any indication that that committee is going to consider the bill and take it up with the idea of reporting the bill to the full committee.

Mr. WEAVER. If I can get that commitment, may I anticipate holding hearings this month?

Mr. MELCHER. I do not know where we are at.

Mr. WEAVER. Within the next 3 weeks?

Mr. MELCHER. I think I can assure you right now that there would not be any possibility within the next 2 weeks. I do not know about the third week. Where are we on the third week?

Mr. WEAVER. Three weeks. Would that be possible to hold hearings in 3 weeks?

Mr. SHAFER. As far as the staff is concerned, if that is agreeable with the chairman, we can shoot for something in that neighborhood.

Mr. WEAVER. That is what I would like very much.

Mr. MELCHER. Well, wait a minute. I am not—gentlemen, with all due respect, I am not going to seem to say that there will be hearings within 3 weeks, because I am going to move the BLM Land Management Act as quickly as possible. I think it is best, and clearly understood, that this subcommittee will not delay beyond the time frame for June 30. Keeping in mind that the subcommittee has to act prior to—in time for the full committee to have plenty of time to act and schedule for the floor. That would not include any necessity for a hearing in April, the entire month of April.

Mr. WEAVER. I am concerned about the other body. Mr. Chairman; in getting the bill out in time, so that the other body can get it.

Mr. MELCHER. What are they doing about it? Who is introducing it?

Mr. WEAVER. That is what I am discussing.

Mr. MELCHER. At any rate, if there is a possibility of action by other committees in the other body, which we have no control over, we will not be a stumbling block here. But I would not want to

seem to be implying that if we get a letter from the other committee in the House stating that we are going to have a meeting before the end of April or the first week of May. Now, I do not want to imply that at this time we are already scheduled for the next couple of weeks, and then the priority will be given if we are in markup on this bill. What I can assure you is if we get assurance from other committees of the other body—really, something ought to be done. We do have time before the June 30 deadline to do something in this subcommittee. We will allow plenty of time before the June 30 deadline.

Mr. WEAVER. Part of my problem is here. That is what I am trying to resolve today. I thank you. I will accept your kind words.

Mr. MELCHER. You are so kind.

I would like you to note that Mr. Landstrom is with us today. He was unable to submit testimony prior to the Easter recess, so we will hear his testimony at this time.

STATEMENT OF KARL S. LANDSTROM, ATTORNEY AT LAW, ARLINGTON, VA.

Mr. LANDSTROM. Thank you, Mr. Chairman. I am really here in two roles this morning. One of those is simply as a citizen interested in future public land management. In that respect I have just a brief two-page list of provisions that I would merely suggest the subcommittee consider.

I have not given the justifications for them, because I presented most, if not all, of that last year, at the hearings held by the subcommittee.

The other role that I appear in is as an attorney representing the Sportsmans Paradise Homeowners Association out in Imperial County, Calif. That is my longer, 11-page statement. I would like to spend a few minutes to highlight that statement, Mr. Chairman.

Mr. MELCHER. Without objection, Mr. Landstrom, your entire statement will be put in the record at this time.

[The prepared statement of Mr. Landstrom follows:]

STATEMENT OF KARL S. LANDSTROM, ATTORNEY AT LAW, ARLINGTON, VA.

This statement is submitted on behalf of the Sportsmans Paradise Homeowners Association, which is a nonprofit organization of the private holders of title to certain real properties situated within a subdivision known as "Harvey's Fishing Hole" in Imperial County, California.

Testimony concerning the title dispute involving the members of the Association and the United States Government was presented to this Subcommittee previously on several occasions.

On January 11, 1974, during the Subcommittee's field hearing at Riverside, California, on H.R. 5441 of the 93d Congress, testimony seeking legislative relief for the private title holders was presented to the Subcommittee by former Congressman Victor V. Veysey and by Mr. Ralph W. Brookins of Whittier, California, who is Legislative Chairman of the Association. (Pages 518-532, Serial No. 93-30, 1974).

Mr. Veysey referred to Sec. 308 of the bill which was under the Subcommittee's consideration (H.R. 5441), describing it as "an effective, and flexible, administrative channel for the adjudication of controversies such as the one which currently involves the members of the Sportsmans Paradise Homeowners Association and others on the Colorado River." However he urged the Subcommittee to act favorably on his bill, H.R. 11098, which would have resolved directly the title controversy referred to above.

Language identical to Sec. 308 of H.R. 5441 is now included in the Subcommittee's Print No. 1 as Sec. 208, "Recordable Disclaimers of Interest in Land".

Mr. Brookins submitted a statement detailing the origins and nature of the title controversy, accompanied by copies of documents and reports which were offered for the Subcommittee's information. In his statement, Mr. Brookins urged the Subcommittee to act favorably on H.R. 11098, the bill which had been introduced jointly Congressman Veysey and by Congressman Charles H. Wilson of California; also to consider favorably Sec. 203 and Sec. 308 of H.R. 5441, the "BLM Organic Act". (As above indicated, Sec. 308 was concerned with recordable disclaimers. Sec. 203 dealt with sales of national resource lands without competitive bidding where, among other things, recognition of equitable considerations would be found to be desirable. Sec. 203 of H.R. 5441 contained provisions which are similar to certain provisions now included in Sec. 203 of Subcommittee Print No. 1.)

Mr. Chairman, I ask that the Subcommittee take due notice of these two statements of January 11, 1974, and that their contents be considered as may be appropriate as the Subcommittee now proceeds with its consideration of the Public Land Policy bill.

I also ask that similar notice be given to my own statement which was presented to the Subcommittee during its Washington, D.C. hearing on H.R. 5441 on April 5, 1974 (Pages 986-998, Serial No. 93-30, Part II, 1974). At that time I summarized the factual situation involving the Associations' membership as follows:

"1. A cadastral survey made by the Bureau of Land Management in 1961 which included the lands in question presumed, without investigation, that the lands were public lands. No opportunity was provided for public participation in the survey's determinations.

"2. The accretion by which the Government alleges that the lands were added to uplands belonging to the United States has been admitted by the United States as having occurred not later than the year 1942. So a period of at least 18 years had elapsed after the alleged cause of action had arisen on the part of the Government and before the date cited by the Government as the first date on which any of the private title holders of record was notified of the claim.

"3. The private title holders relate their title back to a homestead patent issued by the United States in 1914, and to various conveyances of record occurring since that date.

"4. Historical records available to the private title holders indicate that the lands in question were not eroded from the south (Arizona) bank of the River and redeposited on the north (California) bank as hypothesized on behalf of the Government; rather that the lands are elevation lands which were bypassed by the channel and bed of the River as it moved southward over the period from about 1924 to about 1942 as claimed on behalf of the Government.

"5. In any event, under principles and provisions of Public Law 92-562 (Act of October 25, 1972 to permit suits to adjudicate certain real property quiet title actions), the Government's claim of title should not be allowed to prevail because of the Government's delay of at least 18 years in acting upon its cause of action."

My statement went on to describe the *Bechtel* case in which the United States Court of Claims, under a factual situation very similar to that of the Association's membership, recommended to the United States Senate that any claim of title held by the United States be quitclaimed to the private claimants. (As the Subcommittee undoubtedly knows, action along lines recommended by the Court of Claims was taken by the Congress late in 1974 in the form of Public Law 93-578, 93d Congress, S. 3574, December 31, 1974, after having been favorably reported by the House Committee on Interior and Insular Affairs in H. Rpt. No. 93-1595. However the benefits of Public Law 93-578 were limited by its terms to certain described real properties situated in Yuma County, Arizona.)

In my statement I urged the Subcommittee to consider H.R. 11098, the Wilson-Veysey bill, at the appropriate time; and in connection with the "BLM Organic Act". I recommended the enactment of Sec. 308 of H.R. 5441 (which I have already referred to) but only if it should be amended so as to provide adequate statutory standards for its administration.

Specifically, I recommended the following revisions in Sec. 308, which, in the present Subcommittee Print No. 1, appears as Sec. 208:

"1. [At page 29, lines 10-11 of Subcommittee Print No. 1], strike out of issuings the disclaimer as determined by the Secretary and insert as determined by the Secretary of issuing the disclaimer after decision has been made that it shall be issued.

2. [At page 29, line 16 of Subcommittee Print No. 1], insert a new subsection as follows: (d) In investigating and acting upon matters arising under this section, the Secretary shall give full consideration to and apply in each case the doctrine of adverse possession and the defenses of equitable estoppel and laches when raised on behalf of a party or parties thereto, utilizing for such purpose the standards applicable thereto as established therefor within the statutes or laws of the State or Territory within which the lands at issue are located."

By way of justification for these recommended revisions in the bill, I offered certain information which I shall repeat at this time:

"[The section concerned] would authorize the Secretary of the Interior to issue a "document of disclaimer of interest or interests". Such document could then be recorded in the county real property records. The purpose of the document would be to remove the cloud arising from a present or potential claim arising from the Government, including, specifically, an instance in which there are accreted, relicted or avulsed lands which the Secretary finds are not lands of the United States. In return from such a document, the beneficiaries would pay to the Secretary what the bill says are the costs of issuance. However I think they ought not to pay more than the nominal conveyance costs, especially where the cloud has resulted from allegations made by the Government's agency which later turn out to be ill-founded or false. As a matter of fact, there would be good reason to amend the Section to provide some kind of compensation to be paid by the Government to the beneficiaries when they will have been put to substantial hardship and expense in defending their title against allegations by Government employees which, in the end, are shown to be false. . .

"The final report of the Public Land Law Review Commission had this to say about land title disputes involving the Government:

The doctrine of adverse possession should be made applicable against the United States with respect to the public lands where the land has been occupied in good faith. Citizens should be permitted to bring quiet title actions in which the Government could be named as defendant. The defenses of equitable estoppel and laches should be made available in a suit brought by the Government for the purpose of trying title to real property or for ejectment . . ."

... "Mr. Chairman, Section 308 of H.R. 5441 offers an opportunity for justice to be provided through administrative channels without the necessity of judicial review except as a means of last resort.

"May I emphasize, however, that appropriate statutory standards must be provided so that administration of the Section may be carried out in conformance with the policies of the Congress. Otherwise the Secretary or those working under his supervision might continue to exhibit the same kind of insensitivity to principles of equity and justice as, in my judgement, has been exhibited thus far in the *Rechtel* case as well as in the case of the members of the Sportsman's Paradise Homeowners Associations . . ."

Mr. Chairman, the Subcommittee knows, of course, that H.R. 11098, the Wilson-Veysey bill, was not reached for the Subcommittee's consideration last year. However the Subcommittee, in lieu thereof, saw fit to insert in its "BLM Organic Act" legislation a section which would have had similar effect by directing the Court to apply all of the defenses against the Government which are usually available as between private parties in land title disputes within the States affected. That section, as well as the bill as a whole, was immediately pending the Full Committee's consideration as of the close of the 93d Congress.

I regret that action was not completed last year, inasmuch as enactment of the section referred to (which had been favorably reported by this Subcommittee) would have allowed the pending litigation to have proceeded without further doubt as to the legislative standards that were to be applied. Further appearances before this Subcommittee this year, at last as respects the particular geographic areas which were specified in the section, would not have become necessary.

I would point out also, Mr. Chairman, that Sec. 308 of H.R. 5441 (identical to Sec. 208 of the present Print) was not amended by the Subcommittee along lines that I had urged. The present Sec. 208 of the Committee Print No. 1 continues, in my judgment, to be deficient in that it provides no legislative standards to guide the Secretary.

Meanwhile, several new developments have occurred which merit the Subcommittee's attention. One of these concerns the legislative reports which this Committee requested of the Departments of Justice and the Interior on bills regarding River lands that had been introduced by Congressman Wilson. The Congressman was assured at the time that the requested reports from the two departments would be submitted promptly. The fact was, however, that the reports were not submitted until the mid-summer of 1974, over a year later. During the interim, the departments continued to press the Government's litigation against the Association's members and the other defendants involved in the case of *United States v. Harvey et al.*, which remains as pending in the United States District Court for the Southern District of California.

Among the allegations offered to this Committee by the Department of the Interior in its 1974 letter was that the only issue to be decided in the litigation referred to was "whether the changes in the river which caused the shifts of land were accretive, i.e., gradual, or avulsive, i.e., sudden". The fact of the matter, however, is that other very important issues are involved and have been recognized by the Court, including the issues of adverse possession and of laches or equitable estoppel, which are equitable defenses against the Government.

The following extracts from an Order of the Court dated October 11, 1974, are submitted for the Subcommittee's information:

"Defendants' motion for summary judgment on the basis of estoppel. The defendants assert this theory as a defense to the government's suit to eject and as an affirmative ground in their counterclaim to quiet title."

The defendants argue that, regardless of whether the land was formed by accretion or avulsion, the government is estopped to deny their ownership of the land because they have occupied and improved it in reliance on statements by various government representatives in the Bureau of Land Management, the Army Corps of Engineers, and the United States Attorney's Office . . ."

"Generally equitable estoppel is not available against the United States. *Utah Light and Power Co. v. United States*, 243 U.S. 389 (1917). But in recent years an exception has developed where (1) the government is acting in its proprietary rather than sovereign capacity, and (2) if its representative has been acting within the scope of its authority. *United States v. Georgia-Pacific*, 421 F.2d 92 (9th Cir. 1970); *Brandt v. Hickel*, 427 F.2d 53 (9th Cir. 1970); *United States v. Lazy FC Ranch*, 481 F.2d 985 (9th Cir. 1973); *Oil-Shale Corporation v. Morton*, 370 F.Supp. 108 (D.C. Colo. 1973). There is no showing that either of these threshold requirements are fulfilled."

However the court finds that it is unnecessary to meet these threshold requirements in this case because of the enactment of 28 U.S.C. 2409a (Real Property Quiet Title Actions), which provides, in pertinent part:

"(a) The United States may be named as a party in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest . . ."

"(f) Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States . . ."

"(g) Nothing in this section shall be construed to permit suits against the United States based on adverse possession . . ."

[T]he general rule that equitable estoppel does not apply against the United States does not attain where the United States has consented to be sued in quiet title actions by virtue of §2409a.

The government contends that the defendants cannot assert §2409a because, by expressly excluding adverse possession, Congress also excluded equitable estoppel. The legislative history on this point is inconclusive. However, the court notes that the two theories, though similar, are distinct; the court concludes that the express exclusion of adverse possession indicates an intent to include all other theories of action, including equitable estoppel to the extent it is advisable in any suit to quiet title. *Expressio unius est exclusio alterius*.

The defendants may properly assert estoppel in their answer and counterclaim . . .

So the contention submitted to this Committee by the Department of the Interior that equitable relief is not at issue in the matter has been shown conclusively to be ill-founded. Importantly, the Court has contrived the Congressional intention in 28 U.S.C. 2409a as embracing the applicability of all of the defenses ordinarily available to private claimants, excepting only "adverse possession".

Mr. Chairman, under these circumstances I submit that it would be only just and proper, and would amount merely to an extension of an already established Congressional policy having general applicability (28 U.S.C. 2409a), if this Subcommittee were to insert in Sec. 208 of the Subcommittee Print the language which I have recommended so as to provide specific legislative standards under which the Secretary would be required to recognize the ordinary private defenses against the Government's title claims, at least to the extent of all such defenses except for "adverse possession".

And, in view of the PLLRC recommendation No. 113, which includes "adverse possession" along with laches and estoppel, and particularly in view of this Committee's action of last December in the *Bechtel* (Yuma County) cases, I believe it is incumbent on the Subcommittee also to include "adverse possession" among the defenses that the Secretary shall consider, on their merits; and I have included it in my suggested amendment.

Please note that enactment of such a legislative standard would not, of itself decide the outcome of the title dispute. To qualify for the benefits of such enactment, a showing would have to be made before the Department of the Interior that the facts in the case justify the application of the claimed private defense.

As I have said, I believe the Department of the Interior has misadvised this Committee in regard to these equitable considerations which are involved in the Sportsmans Paradise cases. I believe there were several other items of misadvice, as well. If the Subcommittee should require information on the other items, I shall be glad to supply it.

Another important recent development is the fact that legislation along lines developed by this Committee last year has been offered as H.R. 2071 which is pending in the Committee on the Judiciary. Reports on the bill have been requested of the two departments by the Subcommittee on Administrative Law. Submission of the reports at the earliest possible time has been promised by the two departments.

I note that Subcommittee Print No. 1 has omitted any Colorado River lands section similar to the one which the Subcommittee did include in its recommended bill of last year. To be sure, the matter of the Yuma County lands has been accommodated by virtue of enactment of S. 3574 which became P.L. 93-578. It is understandable that the Committee elected to proceed with the Yuma County lands, and omit the Imperial County lands having like circumstances, inasmuch as the Yuma County lands had been made the subject of the exhaustive report by the Court of Claims. At the same time, action on the Yuma County lands without some kind of legislative action on the Imperial County lands (Sportsmans Paradise and others similarly situated) would appear to be unfair.

The House Committee on the Judiciary may or may not act upon H.R. 2071 in a timely manner so as to assist in the disposition of the title dispute which is the subject of the *Harvey* case now pending in the Court. From the present appearance of the *Harvey* litigation, recognition by the Court of the defendants' defenses of laches and estoppel seems to be assured, contingent upon factual determinations. However it appears of be beyond the authority of the Court to countenance any defense of adverse possession by reason of the specific exclusion of that defense in 28 U.S.C. 2409a. Enactment of H.R. 2071, within the limited geographic zones specified in the bill, would resolve any question as to the applicability of all of the usual defenses, including adverse possession.

This Subcommittee, in the "BLM Organic Act", has an opportunity in two ways to move promptly toward a resolution that is just and proper in the Sportsmans Paradise cases: (1) by amending Sec. 208 of the Subcommittee Print in the manner which I have recommended, so as to include "adverse possession" as well as the other equitable defenses which are customarily available to private defendants in real property title disputes; and (2) by reinserting in the bill a new section similar to H.R. 2071, along lines the Subcommittee adopted in 1974.

Adoption of both of these proposals at one and the same time is compatible, inasmuch as the first deals with the disposition of administrative actions before the Department of the Interior; the second deals with the disposition of

civil actions before a United States district court, but only in respect to a very limited geographic distribution.

If the first proposal, but not the second, should be enacted into law, I believe the defendants in the *Harvey* case who consider that they could qualify under its provisions would apply to the Department of the Interior for administrative consideration of their cases and would at the same time apply for continuance of their cases before the Court pending the completion of such action. The second proposal, of course, applies directly to the *Harvey* cases insofar as they might qualify on a factual basis as the trial would proceed. So my judgment is that enactment of either of the proposals would assist the membership of the Sportsmans Paradise Homeowners Association in obtaining a fair and just consideration of their cases. Other private claimants who might be able to qualify under either of the proposals, or under both of them, would also benefit from such enactment.

Thank you. Mr. Chairman, and the Members of the Subcommittee, for your attention to this difficult and pressing problem.

Mr. LANDSTROM. Mr. Chairman, I appeared last year before this subcommittee. Also appearing before this subcommittee on this same matter was former Congressman Victor V. Veysey and Mr. Ralph W. Brookins of Whittier, Calif., who is legislative chairman of the Association.

At one time, during the markup of last year's bill on Organic Legislation, Congressman Charles H. Wilson of California appeared before you in respect to this matter.

I am sure that the Chairman and Mr. Runnels will remember some of the details of this matter. Congressman Weaver, perhaps, is not acquainted with it.

Mr. MELCHER. You are referring to the so-called "Harvey's Fishing Hole" in Imperial County, Calif.?

Mr. LANDSTROM. That is right?

Mr. MELCHER. Which was given consideration in a proposed bill last year, but was—this bill was redrafted and introduced in this Congress, as you well know. It is in Judiciary, not before this subcommittee.

Mr. LANDSTROM. That is true, Mr. Chairman. You are referring, now, to H.R. 2071, by Congressman Charles H. Wilson. However, there is a section in the Organic legislation, and in subcommittee print no. 1, which we believe can be of assistance in resolving this problem administratively.

And I refer, there, to section 208, which deals with the issuance of disclaimers of interest in land, by the Secretary of Interior. On pages 3 and 4 of my statement, I have a suggestion for the revision of section 208, so as to provide congressional standards for the instruction of the Secretary, in carrying out that authority. I made the same recommendation a year ago. I do still believe that the committee should give the Secretary standards by which he shall carry out his responsibility. And those standards should follow the recommendations of the Public Land Law Review Commission, No. 113.

The second way, of course, in which this present legislation could be of assistance in solving the problem, would be to reinsert the Colorado River Land section, which the subcommittee reported on favorably last year, which you just referred to, Mr. Chairman.

Either of these two ways would be of assistance to the membership

of the Association, and the other two are in like circumstances in California, and on the Arizona side of the Colorado River.

Now, Mr. Chairman, since we appeared last year, there have been several developments having a direct bearing on the merits of this bill. One of those, of course, was the enactment by Congress and signature of the President on December 31st last year, of legislation that recognized the principles of laches and equitable estoppel and the principle of adverse possession in the case of lands on the Arizona side, known as the Bechtel case. This committee reported favorably on that legislation.

It is our view that the facts and circumstances are almost identical on the California side of the river, and that the benefits of the legislation of last year, should now be extended to the land on the California side.

As I have indicated, that could be done by either of these two methods in this present bill. Either by amending section 208, or by reinserting the Colorado River Land section.

Another important development which the statement points out is that the court in San Diego, a Federal Court, the Southern District of Columbia, has now determined in an order dated October 11th, which I set out in part on pages 7 and 8, that section 2409a of title 28 of the United States Code, provides that in title disputes for the Government, the private claimants are already entitled to assert their equitable defenses of laches and equitable estoppel and any other defenses that they may have, or that would ordinarily be available between private properties and real estate disputes, with the exception of adverse possessions.

So that in view of that order, we believe that the membership of the Association already—it is an equitable estoppel and laches, what it means is a question of adverse possession and, as you will recall, Mr. Chairman, the Public Land Law Review Commission and recommendation No. 113, urged upon the Congress that they also accord to private claimants against the Government, the right to assert adverse protection, which is the same rights as would be available as between private parties in real title controversy.

The third development was the introduction by Congressman Wilson, initiator of H.R. 2071, which as the Chairman has just indicated was referred to the Committee on the Judiciary, and is now pending before its Subcommittee on Administrative Law.

Despite that fact, we believe that it would be appropriate for this Committee to insert the language of H.R. 2071, within the confines of the present BLM Organic Act, or along the lines that this Subcommittee elected to do last year.

This is, of course, as we know, a rather difficult and complicated matter, and appreciate this opportunity, again, to bring it before this Subcommittee. And, if any further information is needed that I can supply, I will be very happy to do so.

Mr. MELCHER. Thank you very much, Karl. Without objection, the 18 points that Mr. Landstrom has brought to the attention of the committee, referring to committee print No. 1, will be made part of the record at this point.

If there are no objections, it is so ordered.

[The prepared questions of Mr. Karl Landstrom follow:]

QUESTIONS OF KARL S. LANDSTROM, ARLINGTON, VA.

Mr. Chairman, to conserve time I shall merely list some of the items in Committee Print No. 1 which I believe should be changed:

1. Limit the judicial review provision so as to except from judicial review any matter which is committed by law to agency discretion, as is now provided in the Administrative Procedure Act.

2. Redefine "public lands" as those lands *exclusively* administered through the Bureau of Land Management; and make sure that the "O & C" and Coos Bay Wagon Road lands in Oregon are excluded, if the latter is the intention of the Committee.

3. Page 9, lines 23-24, revise to read: "and regulating the private uses of Federal lands and the uses of non-Federal lands in the vicinity of the Federal lands." (The States and the local governments have constitutional power to regulate private uses of Federal lands under leases, claims, permits, etc.)

4. Omit the requirement, page 11, lines 1-4, that the Department of the Interior enforce anti-pollution laws or regulations which are already being enforced by other governmental agencies.

5. Delete the apparently unconstitutional provision by which either of the two Houses of Congress could veto an action of the Secretary of the Interior without concurrence of the other body.

6. Add in Sec. 203 concerning sales of public land a fourth criterion allowing sale, namely, when the land in question is determined to be surplus or excess to any requirement for ownership on the part of the Federal government.

7. Delete any kind of preference to any class of persons in the sale of public lands. Let the market decide who should be the purchasers.

8. Certainly, even if a preference to purchase public lands is to be accorded to particular classes of persons, do not require the Department to complete the transactions by any set period of time, such as 30 days. The reason for this is that conflicting preference rights will likely arise among the preferred classes of persons, requiring extensive time for adjudication thereof, with appeal rights and rights of judicial review.

9. At page 18, lines 3-5, revise to read as though "future uses", not "conveyances, might be in conflict with State and local land use plans, programs, zoning, and regulations.

10. Raise the proposed 5,000-acre limit under "withdrawals" to a much larger figure; or substitute some kind of value criterion.

11. Any Congressional actions under the legislation (such as disapproval or approval of a proposed withdrawal of public lands) should be by joint action of both of the Houses of the Congress, not by the unilateral action or inaction of one House alone. The latter would violate basic constitutional principles.

12. Most certainly eliminate the obviously unconstitutional provision which would grant to the House or Senate Interior Committee the power, without ratification by either House or by joint House and Senate action, to direct the Secretary of the Interior to take certain actions (Sec. 204(b)(1)).

13. Delete the requirement that mining claimants must file a copy of their relocation notices in BLM offices. Filing in the local government record offices should be adequate—the U.S. Government should be able and willing to go there for such data as it requires. Any dual filing requirements—local records and BLM records—would probably result in record title conflicts and consequent litigation.

14. Continue, as in Print No. 1, to resist the Administration's proposal to require holders of unpatented mining claims to file for mineral patents within set periods of time. Such proposal, in my judgment, is unconstitutional.

15. Include in the bill a revision of the U.S. mining laws setting up a leasing system in place of the present location and patenting system.

16. Include in the bill a revision of the U.S. mineral leasing laws to provide for competitive bidding wherever competitive interest is shown on the records—as by the receipt of two or more noncompetitive lease offers for "wildcat" lands.

17. Delete the requirement that the Director of BLM must receive Senate confirmation to be appointed. The position of Director, as well as all subordinate positions in the Bureau, should be in the competitive civil service, with permanent tenure after the usual initial probationary period. So-called "political" clearance of executives in the Department of the Interior should be limited to personnel in the top echelons of the Office of the Secretary.

18. Provide in the legislation for some kind of interim continuation of the various public land laws that are to be repealed, pending the full implementation, by Departmental regulation or otherwise, of the new legislative provisions. If something like this is not done, some aspects of public land administration would face the possibility of a complete standstill, inasmuch as lengthy delays in implementing the new provisions will likely be encountered because of the environmental impact statement requirements of NEPA.

Mr. Chairman, my reasons for advancing these suggestions have been stated at earlier times. Thank you for considering my views.

Mr. MELCHER. When you redrafted your Harvey's Fishing Hole bill so that it was referred to the House Judiciary Committee, were you given some—did you have some feeling that the matter would be resolved by that committee?

Mr. LANDSTROM. No, sir. I tried to draft it so that it would be referred to this Committee, although I would be the first to admit that the subject matter more properly belongs in the Judiciary Committee.

We followed almost precisely the wording that this subcommittee developed. I think it was probably Congressman Steiger's language that was developed in this subcommittee last year. We followed that almost precisely.

The result was it was referred by the House to the Judiciary in May, but it was not my intention at all that that result occur.

Mr. MELCHER. Well, since it has been referred to that committee by the Speaker, it would seem that since you agree that it is a proper committee to consider the matter, it hardly seems appropriate that we should be considering it in here.

Mr. LANDSTROM. I think it would be appropriate, just as it was last year, and if you recall, Mr. Chairman, Congressman Steiger and Congressman Udall were instrumental in amending the BLM Organic Act so that it is included.

I think it is germane, Mr. Chairman, to the subject matter of the BLM Organic Act, and that could be raised in either of the committees.

Certainly, Mr. Chairman, the amendment we suggest to section 208 of the act, would be germane to the subject matter of this section and this pending legislation, and I believe that if that went on it would greatly help to resolve the questions, because then the people under these circumstances could apply to the Department of Interior for an administrative determination of the matter.

This would shortcut the litigation before the court. The court might be constrained to postpone its further consideration and trial until the Secretary had had an opportunity to make an administrative determination. And this would, I think, aid the entire matter.

And the Secretary, as well as the court, would have the benefit of congressional standards by which to proceed, which they do not now have. And I may add, Mr. Chairman, that after section 208 is enacted, either with or without our amendment, it would apply to general law in any locality, in any public land area, and not just in the case of the Colorado River land.

That would be beneficial. I think it would be helpful in implementing this recommendation of the Public Land Review Commission.

Mr. MELCHER. In item 12, Karl, you say that section 204(b)(1) is an unconstitutional procedure.

Mr. LANDSTROM. That is my own belief. I have accepted and respected the advice that has been given by the Department of Justice, consistently, on this matter, to the executive branch. I think you will find, Mr. Chairman—I am sure you are aware—that on this point the executive branch has consistently opposed unilateral action by any one House of Congress, without the concurrence of the other in making law.

The same thing would apply to legislation that would attempt to authorize a committee of either House to make law without action of the Congress. I feel that this bill does trespass over that line unduly.

Mr. MELCHER. Well, who gives that advice? The Justice Department?

Mr. LANDSTROM. This has been the consistent position of the Department of Justice over many years.

Mr. MELCHER. Well, the Justice Department has not had a very consistent position in objecting to withdrawals on the basis of only the executive determining the withdrawal.

Mr. LANDSTROM. Mr. Chairman, the executive has been operating under statutory powers. Or, if not statutory powers, constitutional powers, in making withdrawals.

Mr. MELCHER. Well, you seem to draw some distinction on the separation of powers, as outlined by the Constitution?

Mr. LANDSTROM. Of course what I am referring to—

Mr. MELCHER. Required by the Constitution, when it refers to one or the other bodies of Congress, recommending the withdrawal, by leaning, I guess, on the proposition that one or the other bodies recommend the withdrawal, it would probably be a joint venture by the two parties? Is that your point?

Mr. LANDSTROM. I think, Mr. Chairman, I do not have references to recommendations. I have references to the making of law that would be, for example, an action by one of the Houses, either to veto an Executive act, or to create a withdrawal by approving an Executive action, without the concurrence of the other House.

It seems to me that the Constitution requires that if Congress acts, it be a joint action of two Houses, as far as the making of law is concerned, by affecting the citizen.

Mr. MELCHER. I do not think it would inhibit us from doing what is practical in asserting practical consideration of withdrawal by the Secretary, which has almost always been unilateral action by the executive branch, quite often, to the confusion and consternation of the legislative branch. Perhaps you can find someone in the legislative branch—

Mr. LANDSTROM. The executive branch is unitary, just as the President acts or delegates, whereas in the case of the Congress, you have two Houses. That is the only point I make.

Mr. MELCHER. Well, I suspect for the next 20 or 30 years, we are going to see a lot of such legislation enacted, and there will be one or the other body of Congress taking some definite position.

And, if that happens to be unconstitutional, I suspect we will find out. We addressed ourselves on the Alaskan Pipeline Act, to

a review by either body of Congress on oil or gas pipelines across public lands. And that point was raised at that time, and I think it will be in other acts, too. So if Congress can only act in cohesion of both bodies, and if that is found to be the constitutional experience, I expect that we will abide by it.

But, until that theory is handed down by the courts, I do not think we will take it very seriously.

The gentleman from Oregon?

Mr. WEAVER. Mr. Landstrom, point No. 2, you say to "make sure that the 'O & C' and Coos Bay Wagon Road lands in Oregon are excluded * * *"? Excluded from what?

Mr. LANDSTROM. You may recall, Congressman Weaver, that I made the same point when I appeared—

Mr. WEAVER. Are you talking about exclusion from any participation in this act?

Mr. LANDSTROM. I would think that it is the intention of the committee to exclude from the general pages of this act. They ought to make sure that they are, and I do not think they are now.

The present definition of public lands, which applies generally throughout the bill, is broad enough to include the O. & C. lands and the Coos Bay Wagon Road lands.

Mr. WEAVER. Page 72 of the subcommittee print No. 1, section 601(b), have you read that section?

Mr. LANDSTROM. Section 601(b) says:

Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Act of August 28, 1937 (43 U.S.C. 1181a-1181j), insofar as it relates to management of timber resources, and disposition of revenues from lands and resources, the latter shall prevail.

That would seem to say that most of the O. & C. Act, but not everything—not everything. There are more than these items, I think, that pertain to those lands than would be covered by the parts of the bill.

Mr. WEAVER. Is it your point that you want to exclude O. & C. lands completely from any provision of this bill? Is that what you are saying?

Mr. LANDSTROM. The fact of the matter is, I would like to seem them totally included in all parts of the bill. I merely called the committee's attention to the fact that—

Mr. WEAVER. Thank you, Mr. Landstrom. No more questions.

Mr. LANDSTROM. Yes, sir.

Mr. MELCHER. The gentleman from Colorado?

Mr. JOHNSON. I have no questions.

Mr. MELCHER. Thank you, very much, Karl.

Mr. LANDSTROM. Thank you, Mr. Chairman.

Mr. MELCHER. The committee will stand adjourned until tomorrow morning. Tomorrow morning, again, we have to interrupt what was previously scheduled, the continuation and consideration of these bills. I have to interrupt that to hear from the Justice Department on H.R. 49 and from Mr. Moss, if he so chooses, to advise us of the suggestions on H.R. 49.

The reason for going back to H.R. 49 is—well, we had invited the administration to send up whoever they wanted to testify on H.R. 49. Nobody from the Justice Department came up. And, apparently,

hearing from Navy representing the Defense Department, and hearing from the Interior Committee representing the administration in general, we have to assume that their statements were cleared by the Office of Management and Budget.

So, prior to their testimony before us, there was no reference by either Navy or Interior to any matters pertaining to Justice, or investigation of California's situation regarding controlling the market in practices of restraint of trade. And now we are reviewing testimony submitted by Mr. Clearwaters, the Justice Department representative for the Antitrust Division. At least he partially has some concern on H.R. 49 and their antitrust investigations.

Now Mr. Clearwaters, or anybody in Justice, who has some advice to offer on H.R. 49, the appropriate place is this subcommittee and we want our record to show this. So, at last we have justice, if they would care to perhaps come up and we will ask them to be specific in their testimony.

Justice testified before the Armed Services Committee. They lacked very much the specificity and they also seemed to lack a knowledge of what is in H.R. 49. So, if they have something to offer, we will give them the opportunity tomorrow, and that is the reason for that.

The subcommittee will be adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 11:10 a.m., the subcommittee adjourned, to reconvene at 10 a.m., Tuesday, April 8, 1975.]

PUBLIC LAND POLICY AND MANAGEMENT ACT OF 1975

FRIDAY, APRIL 11, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC LANDS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:45 a.m. in room 1324, Longworth House Office Building, Hon. John Melcher (chairman of the subcommittee) presiding.

Mr. MELCHER. The Subcommittee on Public Lands will come to order. We will continue our hearings this morning on H.R. 5524 and H.R. 5622 and the subcommittee print No. 1. First of all I want to run through the witness list to see who is here.

Mr. Edwards.

Mr. EDWARDS. Yes, I am here.

Mr. MELCHER. George Alderson and Harry are here, and my good friend, Kenneth Rustad, is not here. As I understand it, he is submitting his statement for the record.

Without objection, the statement of Kenneth Rustad, commissioner, Fallon County, Mont., director, National Association of Counties Western Region District Board, and chairman, Natural Resources Committee for the Montana Association of Counties—his statement will be made part of the record at this point.

Without objection, so ordered.

[The prepared statement of Kenneth Rustad follows:]

SUMMARY OF THE STATEMENT SUBMITTED BY KENNETH RUSTAD, COMMISSIONER, FALLON COUNTY, MONT., DIRECTOR, NACo WESTERN REGION DISTRICT BOARD; CHAIRMAN, NATURAL RESOURCES COMMITTEE FOR THE MONTANA ASSOCIATION OF COUNTIES

The statement submitted by Commissioner Kenneth Rustad, is made on behalf of the National Association of Counties (NACo), the only organization representing county government at the national level.

The purpose of the testimony is to provide support, and recommend several amendments, to the proposed Public Land Policy and Management Act of 1975. This Act would establish policy and guidelines for the management, protection, development and enhancement of the public lands now administered by the Bureau of Land Management (BLM), U.S. Department of Interior.

In the testimony it is pointed out that NACo believes the proposed Public Land Policy Management Act is one of the most important pieces of legislation being considered by this Congress. NACo also encourages the Committee to consider the recommendations of the Public Land Law Review Commission in its deliberations.

The testimony by Commissioner Rustad highlights the following points:

Support for the basic thrust of the legislation to establish goals and policies for land use planning and management of the public lands administered by BLM.

Support for the Multiple Use Concept for management of the public lands.

Support for Congressional review of large scale public land withdrawals from multiple use to single purpose use (to reflect the importance of large scale withdrawals, not to reflect as criticism of BLM administration).

Support for the specific requirements for participation by the public and local elected officials in the land use planning process.

Support for the requirement that disposals of public land be consistent with state and local government plans.

Support for the section to allow conveyance of public lands to state and local government for recreation purposes "without monetary consideration".

Further, Commissioner Rustad's testimony includes the following NACo endorsed recommendations for changes in the proposed legislation:

Addition of the policy statement recommended in the Public Land Law Review Commission Report that:

"If the national interest dictates that lands should be retained in Federal ownership, it is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the United States and is not borne only by those states and governments in whose area the lands are located.

"Therefore, the Federal government should make payments to compensate state and local governments for the tax immunity of Federal lands."

Deletion of the section titled "cost-share road authorization" which would allow purchase credit road construction of a single-purpose nature in violation of the multiple use concept for public lands.

Modification of the provision establishing authorizing local advisory councils to make these councils mandatory.

Addition of a provision as recommended in the Public Land Law Review Commission Report prohibiting the authorization of uses on public lands that are inconsistent with state or local zoning regulations unless BLM makes a finding that overriding national interest requires the use.

Deletion of the section authorizing BLM employees to carry firearms, serve warrants, make arrests, etc., and instead support for the section encouraging cooperation with existing state and local law enforcement on public lands.

Deletion of the provision in the wilderness study section requiring treatment during the study period of all roadless areas as wilderness rather than on a basis determined by the land use management process.

As an appendix to the testimony a report is submitted to the Committee that was prepared for NACo by Mr. Ken Tollenaar, Director, Bureau of Government Research and Service, University of Oregon.

The report points out the problems related to "purchaser road credits" on National Forest Roads which result in single purpose road construction and poor land management. The same problems would result if such a practice were to be authorized for BLM lands.

STATEMENT OF KENNETH RUSTAD, COMMISSIONER, FALLON COUNTY, MONT., ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES (NACo), SUBMITTED BY JIM EVANS, NACo LEGISLATIVE REPRESENTATIVE

Mr. Chairman and members of the Subcommittee: This statement is made on behalf of the National Association of Counties (NACo), the only organization at the national level representing county governments on a nationwide basis.

The purpose of the testimony is to provide support, and recommend several amendments, to be proposed Public Land Policy and Management Act of 1975. This Act would establish policy and guidelines for the management, protection, development and enhancement of the public lands now administered by the Bureau of Land Management (BLM), U.S. Department of Interior.

For this statement an analysis has been made of the Subcommittee print number 1, dated March 18, 1975, titled: PUBLIC LAND POLICY AND MANAGEMENT ACT OF 1975. NACo has also analyzed the bill before your subcommittee, HR 5224, titled: NATURAL RESOURCE LANDS MANAGEMENT ACT. However, the emphasis of this testimony is on the Subcommittee print unless otherwise specifically referenced.

NACo believes the legislation under consideration by your Subcommittee is one of the most important Act before the 94th Congress. The federal government owns more than 1 million acres of land in 31 of the states and in 12

states this ownership ranges from approximately 29% to 95% of the total land in the state. The policies and guidelines established by Congress for the management and use of these lands will have an impact on the vast majority, if not all, of our citizens.

State and local governments who provide services adjacent to and on the public lands are extremely concerned with the actions authorized on these lands.

In the analysis of the legislative proposals NACo considered the recommendations contained in the 1970 report of the Public Land Law Review Commission made a thorough study of virtually every important issue confronting the use of public lands during the period of 1965 to 1970. The Commission's report contains 137 specific recommendations for executive and legislative actions to improve management of the public lands.

The basic aim of the Public Land Law Review Commission was to provide recommendations to "assure equitable treatment of our citizens and make the public land laws of the U.S. and their administration simpler, more effective and, "... for the maximum benefit for the general public".

NACo therefore has made reference in this testimony to specific recommendations of the Public Land Law Review Commission for your Subcommittee's consideration.

NACO SUPPORT FOR THE BASIC THRUST OF THE LEGISLATION TO ESTABLISH GOALS AND POLICIES FOR LAND USE PLANNING AND MANAGEMENT OF THE PUBLIC LANDS ADMINISTERED BY BLM

NACo believes the thrust of the proposed legislation has the same basic aim as the Public Land Law Review Commission. We wholeheartedly endorse this aim. With sound policies and guidelines established by Congress more equitable treatment and benefit for the general public can be achieved.

The establishment of policies and procedures for inventory of public land resources, a land use planning process; policies and guidelines for sales, withdrawals, exchanges and acquisitions of public lands; and an overall legislative framework to guide the administration of public lands is essential for sound management and equity.

The number one recommendation of the Public Land Law Review Commission was that "goals should be established by statute for a continuing dynamic program of land use planning". This recommendation was based on the following reasons indicated in the Commission report:

"The Commission is not satisfied with the manner in which land use planning is being carried out for the public lands. We find that many of the individual problems that led to the creation of this Commission and which emerged from our study program have their roots in an inadequate planning process.

"We are concerned, first of all, that the Congress has not established a clear set of goals for the management and use of public lands. This is particularly true for the national forests and lands administered by the Bureau of Land Management.

"Congress has also failed, in many cases, to provide a positive mandate to the agencies to engage in land use planning or to provide guidance concerning the matters which they should consider in determining whether or not to dispose of, or retain, Federal lands and in deciding on uses of lands that remain in Federal ownership.

"Further, we found a lack of coordination among Federal public land management agencies at the regional and local levels, between the Federal agencies and other units of government, and between Federal agencies and the owners of adjacent private lands. We discovered problems caused by the lack of coordination between public land agencies in nearly every aspect of public land policy that we reviewed."

NACO SUPPORT FOR THE MULTIPLE USE CONCEPT OF THE PUBLIC LANDS

NACo supports the multiple use provisions in the Committee print, Section 102(a) (7) and 103(c). Similar sections are also included in HR 5224.

We believe this concept will allow the Bureau of Land Management sufficient flexibility in its administration of the public lands through the land use planning process.

This concept allows for designation of primary uses for specific lands while permitting other compatible uses.

NACO SUPPORT FOR THE CONGRESSIONAL REVIEW OF LARGE SCALE PUBLIC LAND WITHDRAWALS FROM MULTIPLE USE TO SINGLE PURPOSE USE TO REFLECT THE IMPORTANCE OF LARGE SCALE WITHDRAWALS

NACo supports the provision in Section 204 of the Committee print requiring Congressional approval of large scale withdrawals.

This is a key difference from HR 5224 which contains no Congressional approval provisions.

The pertinent recommendation of the Public Land Law Review Commission is as follows:

"Large scale limited or single use withdrawals of a permanent or indefinite term should be accomplished only by act of Congress. All other withdrawal authority should be expressly delegated with statutory guidelines to insure proper justification for proposed withdrawals, provide for public participation in their consideration, and establish criteria for Executive Action."

Section 204 of the Committee print also provides for proper consultation with state and local governments and for adequate public participation in the withdrawal process.

NACO SUPPORT FOR THE SPECIFIC REQUIREMENTS FOR PARTICIPATION BY THE PUBLIC AND LOCAL ELECTED OFFICIALS IN THE LAND USE PLANNING PROCESS

Section 202(g) of the Committee print provides that BLM will establish procedures for public involvement and participation in the land use planning process. This is a fundamental requirement for successful land use planning whether it be at the national, regional or local level. It is important that section 202(g) remain in the Act. No similar provision is included in HR 5224.

However, HR 5224 does contain a section providing for written notice to users of public lands in the planning process (sec. 103-d). NACo supports this provision as an addition to the Committee print.

SUPPORT FOR THE REQUIREMENT THAT DISPOSALS OF PUBLIC LAND BE CONSISTENT WITH STATE AND LOCAL GOVERNMENT PLANS

NACo supports Section 203 of the Committee print that requires notification of state and local governments by BLM prior to sales or disposals of public land.

Many local communities in areas of large federal land holdings have restricted opportunities to acquire land for local public purposes. First, their property tax base has been restricted due to the tax immunity of public lands. This limits their ability to acquire lands for local public purposes. Second, the availability of land is restricted due to the large federal holdings.

Therefore the federal government should give preferential treatment to state and local governments, both in the notification for sale of public lands, and for the price charged in its disposition.

SUPPORT FOR THE SECTION TO ALLOW CONVEYANCE OF PUBLIC LANDS TO STATE AND LOCAL GOVERNMENTS FOR RECREATION PURPOSES "WITHOUT MONETARY CONSIDERATION"

NACo supports Section 402 of the Committee print authorizing conveyance of public lands to state and local governments at no monetary charge for recreation purposes. No similar provision is included in HR 5224.

NACO RECOMMENDATION FOR ADDITION OF THE POLICY STATEMENT RECOMMENDED IN THE PUBLIC LAND LAW REVIEW COMMISSION REPORT THAT

"If the national interest dictates that lands should be retained in Federal ownership, it is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the United States and is not borne only by those states and governments in whose area the lands are located.

"Therefore, the Federal government should make payments to compensate state and local governments for the tax immunity of Federal lands".

NACo believes the addition of this policy statement is an absolute requirement to the Public Land Policy and Management Act. As indicated earlier one of the basic goals of the legislation is to provide equity to the citizens. If the taxpaying citizens are to receive equity the Federal government must recognize the impact on state and local government for the tax immunity of the public lands. Without this provision in the Act we believe it will fall far short of being any meaningful equity.

The Public Land Law Review Commission in its deliberations recognized the importance of this issue. County governments normally rely on property taxes for at least 1/3 of our revenue sources. When the Federal government establishes a policy that large holdings of land will remain in federal ownership and thus exempt from property tax this places an unfair burden on other taxpayers within the county where the lands are located.

Current lease receipts sharing formulas enacted by Congress in a partial recognition of this problem do not provide sufficient reimbursement to make up for the tax immunity.

For the Subcommittee's consideration NACo has attached an excerpt from Public Land Law Review Commission that describes the problems and the reasons for the Commission recommendation that a system of payments-in-lieu of taxes be established because of this tax immunity.

It is very difficult for county officials to understand how this policy can be ignored in an Act which is establishing as its number one policy statement that the public lands shall remain in federal ownership.

Following is a copy of the section of the Public Land Law Review Commission report that deals with the tax immunity issue.

CHAPTER FOURTEEN.—TAX IMMUNITY

Because of the sovereignty of the United States, federally owned lands cannot be taxed by state or local governments. This has created large and increasing problems for the states within whose borders such lands lie. The problems are particularly felt in the West where most public lands¹ are concentrated and where, as previously shown in this report, federally owned lands often constitute a large proportion of a state's total area. But the situation, concerning which the Commission is required to make recommendations, is not confined to the West. Eleven nonwestern states each contain more than 1 million acres of Federal land, ranging from approximately 8 percent of the total area of Arkansas to 3.2 percent of Georgia. In addition, West Virginia contains 920,212 acres of public lands (5.9 percent of the state's total acreage); South Carolina 680,265 acres (3.5 percent); New Hampshire 678,807 acres (11.8 percent); and Vermont 240,238 acres (4.0 percent) (in each state there are also other Federally owned lands).

Originally, the Federal ownership of land was considered, in general, to be temporary. Under Federal policy and laws the public domain passed into private ownership and thereupon became subject to state and local taxation. The retention by the Federal Government of comparatively small amounts of land for military or other Federal purposes seemed to pose no serious problem for the future, and even in 1872, when a large tract in Wyoming was set aside to establish Yellowstone National Park, it was still generally assumed that almost all of the rest of the Nation's public domain would eventually be transferred to private ownership.

In 1891, however, with passage of the act that authorized the President to set aside forest reservations, a major break with the past occurred. As large tracts of forest land were set aside as reserves, it became obvious that millions of acres of the public domain would be retained and managed permanently by the United States and would never pass into private ownership.²

The impact on the taxability of state and local governments by the Federal Government's retention of the forest lands caused concern at an early date, and in 1907 Congress authorized the return of 25 percent of stumpage sale receipts to the counties in which the timber was cut to be used for public education and roads.³

In 1920, the Federal Government acted similarly when the Mineral Leasing Act⁴ of that year removed from the operation of the Mining Law certain min-

¹ As used here the term "public lands" refers only to those lands coming within the definition of that term in section 10 of the Commission's Organic Act, as quoted in the Introduction and printed in full in Appendix A.

² The 1891 Act, as amended, is 16 U.S.C. § 471 (1964). Today the total of lands administered by the Forest Service has grown to over 186.9 million acres in 44 states. Of the total, 160.8 million acres came from public domain lands, and the rest was acquired from non-Federal sources. For a breakdown of acreage by states, see Appendix F.

³ 16 U.S.C. § 500 (1964).

⁴ 30 U.S.C. § 181 et seq. (1964).

erals, including oil and gas deposits, and thus assured that lands chiefly valuable for those minerals would remain in Federal ownership. As part of the Mineral Leasing Act, Congress authorized sharing with the states the receipts generated by the oil and gas leases, giving the state of origin 37½ percent of the revenue, the Reclamation Fund 52½ percent, and permitting the United States to keep only 10 percent for its cost of administration. The only exception is that Alaska receives 90 percent of oil and gas lease revenues in accordance with the provisions of the Mineral Leasing Act.⁵ Several other, but relatively minor revenue-sharing programs were also developed, both before and after the two mentioned above, but payments made by the Federal Government to the states for such programs have been comparatively small.⁶

The legislative history of the acts providing for the sharing of receipts from forest products and oil and gas, as well as other leasable minerals, clearly reflects that the payments to the states and local governments were intended as compensation for the fact that the lands in question would no longer be available for private ownership and property taxation.

Today, however, the pressure of new circumstances requires new thinking. Until comparatively recently, the cost of providing state and municipal services, especially in the western public land states whose vast spaces had a sparse population and received relatively few outside visitors, was not very great. But in recent years, a dramatic change has resulted from the greatly increased mobility of the American people. Visitors who now come in increasing numbers to public land areas from all over the country require, as a minimum, the same services that are furnished to local citizens—and sometimes they require more.

At the same time, state and local government expenditure levels and revenue requirements have vastly increased. In 1940, prior to World War II, the combined spending of state and local governments was approximately \$9.3 billion. Ten years later, in 1950, it had risen to approximately \$22.8 billion. In 1969, the figure exceeded \$100 billion.

In the meantime, while state and local revenue needs have been growing, the recent years have seen a greatly expanded increase in the acreage of lands permanently set aside by the United States for various purposes. From relatively modest beginning, for example, there are now 18,564,079 acres of public domain under the jurisdiction of the National Park Service, with an additional 4,735,818 acres acquired for the National Park System, or a total of 23,299,897 acres spread among 44 states⁷ and over 26 million acres set aside for the Wildlife Refuge System in all 50 states.

The largest portion of the public domain, more than 465 million acres, including 295 million acres in Alaska, is under the jurisdiction of the Bureau of Land Management of the Department of the Interior. Except for those lands that may be transferred to the states to satisfy land grants, this large acreage comprises, for the most part, what is known as the vacant unappropriated public domain, and was previously assumed to be destined for private ownership. But since the passage of the Taylor Act in 1934,⁸ the transfer of these public domain lands to private ownership has slowed considerably. In the last decade, it has dwindled to a trickle while awaiting the enactment of legislation suited to the needs of today and tomorrow.

If the recommendations of this Commission are followed, additional millions of acres of public domain land will be retained by the Federal Government instead of being transferred, as contemplated until relatively recent times, to private ownership. With the millions of acres of land already reserved, plus the additional acres that probably will be set aside, the United States must re-examine its relationship to the state and local governments within whose borders those lands are located.

PAYMENTS TO COMPENSATE FOR TAX IMMUNITY

Recommendation 101: If the national interest dictates that lands should be retained in Federal ownership, it is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the

⁵ 30 U.S.C. § 191 (1964).

⁶ A breakdown of all programs and payments is contained in EBS Management Consultant, Inc., *Revenue Sharing and Payments in Lieu of Taxes*, Pt. 2. PLLRC Study Report, 1968.

⁷ For breakdown by states, see Commission staff, *Inventory Information on Public Lands*, PLLRC Study Report, 1970.

⁸ 43 U.S.C. § 315 et seq. (1964).

United States and is not borne only by those states and governments in whose area the lands are located.

Therefore, the Federal Government should make payments to compensate state and local governments for the tax immunity of Federal lands.

The study made for this Commission confirms the contention of state and county government officials that shared revenues amount to much less than the revenues they would collect if the lands were in private ownership and subject to taxation.⁹ While the bulk of the states analyzed were in the West, detailed studies of counties in other parts of the country demonstrated that the situation is similar everywhere.¹⁰

The fact that the lands on the tax rolls would have brought in a greater revenue should not by itself be considered persuasive. It is, however, a compelling indicator of both the magnitude of an existing problem and the impact of the present system.

This Commission is convinced that the United States must make some payments to compensate state and local governments which have burdens imposed on them because of Federal ownership of public lands within their borders. Even though it is recognized that Federal expenditures must be held to the minimum necessary to provide essential Federal programs, the Federal Government, as a landowner, must pay its way. Whatever the costs, fairness and equity demand that such payments be made.

A system of payments in lieu of taxes provides a better standard for determining the level of payments than does a system of sharing revenue. Just as in their relationship to private property, state and local governments are, in general, constitutionally responsible for providing the ordinary functions of government to the public land areas within their borders. Federal ownership, in other words, does not mean that the Federal Government has assumed fiscal responsibility for the administration of all aspects of those lands. But, the system of revenue sharing bears no relationship to the direct or indirect burdens placed on state and local governments by the Federal lands within their boundaries.

In practice, there has been no attempt made to correlate the service rendered, or the burdens assumed, by the local governments to the payments they receive under the present revenue-sharing systems. As a result, the portion of Federal revenues which they currently receive varies from 5 to 90 percent, depending on the program and Federal agency involved.

Although they were originally designed to offset the tax immunity of Federal lands, the existing revenue-sharing programs do not meet a standard of equity and fair treatment either to state and local governments or to the Federal taxpayers. Such a standard should be established and applied.

In addition, the Commission's review has revealed several defects in the revenue-sharing system. In some cases, payments made by Federal programs undercompensate, while in others they overcompensate. The revenue-sharing programs, moreover, do not apply to many federally owned lands, and where they do apply, management decisions often reduce or eliminate the revenue base upon which the payments to state and local governments depend. At the same time, pressures can be generated to institute programs that will produce revenue, though such programs might be in conflict with good conservation-management practices.

The Commission has thus concluded that the existing system of revenue sharing is not equitable, and that the Federal taxpayer is financing a program that has little relation to the purpose it was originally designed to accomplish.

It is axiomatic that expenditure requirements determine the tax levels needed to produce the revenue to meet the costs of government. Since the *ad valorem* tax system has been the foundation for the financing of programs providing municipal services, the Commission believes that all landowners must share in payment for these services. This should not exclude the Federal Government as a landowner, except where the federally owned land is being used for facilities,

⁹ EBS Management Consultants, Inc., *Revenue Sharing and Payments in Lieu of Taxes*, Pt. 4 PLLRC Study Report, 1970, for a detailed analysis of revenue sharing and payments in lieu of taxes related to public lands in five states and 50 counties.

¹⁰ For example, in Carroll County, New Hampshire, where 24 percent of the land is in national forest, total benefits to the county from both Federal revenue sharing payments and indirect benefits in 1966 amounted to \$21,291. The estimated potential tax revenue to the county from the Federal lands, if assessed and taxed on the same basis as privately owned lands of similar character, was estimated at \$151,420. In Gogebic County, Michigan, the potential tax revenue was estimated, likewise, at \$251,840 from national forest lands, as compared to direct and indirect benefits of \$149,581 in 1966.

as in the case of post offices, to furnish services to all the people throughout the country.

Believing, as the Commission does, that the tax level represents the actual need for revenue, Federal payments related to the level of state and local taxes levied on private owners should be in proportion to the services received and burdens imposed by Federal ownership. At the same time, to repeat, they should be fair and equitable to all concerned.

NACO RECOMMENDATION FOR DELETION OF THE SECTION TITLED "COSTS-SHARE ROAD AUTHORIZATION" WHICH WOULD ALLOW PURCHASE CREDIT ROAD CONSTRUCTION OF A SINGLE-PURPOSE NATURE IN VIOLATION OF THE MULTIPLE USE CONCEPT FOR PUBLIC LANDS

The Committee print contains a provision, Section 502, that would authorize BLM to finance road construction "purchaser credits". NACo opposes this provision.

This provision is similar to the authority for the National Forest Service to finance road construction with purchaser credits, an authority that NACo believes has been abused and has resulted in poor management of National Forest Service lands. It would be a mistake to establish the same practice for BLM lands.

We have attached as an appendix to this statement a report prepared for NACo on this road construction problem. The report was prepared by Kenneth C. Tollenaar, Director, Bureau of Governmental Research and Service, University of Oregon.

NACO RECOMMENDATION FOR MODIFICATION OF THE PROVISION ESTABLISHING AUTHORIZING LOCAL ADVISORY COUNCILS TO MAKE THESE COUNCILS MANDATORY

Section 309 of the Committee print "encourages" the establishment of local advisory councils for land management consultation on a regional, state, district or local basis. NACo believes this section should be amended to make these advisory councils mandatory.

NACO RECOMMENDATION FOR ADDITION OF A PROVISION AS RECOMMENDED IN THE PUBLIC LAND LAW REVIEW COMMISSION REPORT PROHIBITING THE AUTHORIZATION OF USES ON PUBLIC LANDS THAT ARE INCONSISTANT WITH STATE OR LOCAL ZONING REGULATIONS UNLESS BLM MAKES A FINDING THAT OVERRIDING NATIONAL INTEREST REQUIRES THE USE

Neither the Committee print nor HR 5224 contains a provision to insure consistency of Federal actions with state and local land use regulations. Since the state and local governments represent the citizens affected by the Federal actions on public lands it is essential that, except where overriding national interest prevails, state and local government land use regulations must be considered.

Following is an excerpt from the Public Land Law Review Commission report supporting this recommendation.

STATE AND LOCAL ROLES

Recommendation 13: State and local governments should be given an effective role in Federal agency land use planning. Federal land use plans should be developed in consultation with these governments, circulated to them for comments, and should conform to state or local zoning to the maximum extent feasible. As a general rule, no use of public land should be permitted which is prohibited by state or local zoning.

There are two basic reasons for involving state and local governments in Federal land use planning. First, these governments represent the people and institutions that will be most directly affected by Federal programs growing out of land use planning. For example, disposal of land to private ownership may involve substantial service burdens to state and local government, such as education and highway costs, which are not matched by a corresponding increase in taxes.

Secondly, the objectives of land use planning can be frustrated unless all land within the planning area is included, regardless of ownership. Land use decisions often have important economic and environmental impacts at the regional, state, or local level. A decision by the Forest Service to facilitate the construction of a pulp and paper plant by making national forest timber

available to a proposed mill will have a significant economic impact, but it can also have a serious external effect on the surrounding community in the form of air and water pollution.

The Commission recognizes that there is a wide variation in the quality of the planning process as it exists at the level of state and local governments. In many public land areas, there is neither comprehensive planning nor zoning at the state or local level. Where either does exist, no attempt has been made to extend state or local zoning to cover Federal lands. One of the historical reasons for this disinterest has been that the local authorities had little reason to believe that they would influence the land planning of Federal agencies, although in more recent years some progressive local authorities have affirmatively zoned Federal lands with the cooperation of Federal agencies.

Involving state and local planning groups in joint land use planning efforts with Federal agencies could have a significant effect in promoting a more active interest in land use planning by state and local governments. To us, broad gauged land use planning at all levels is vital if our nation is to meet the challenge of the next three decades to meet our increasing resource and environmental needs from a fixed land base.

Awareness of the necessity for more aggressive land use planning and zoning in the states has changed significantly within a very few years. Some states have enacted statewide zoning and land planning laws, embracing rural and urban areas alike, and are committing funds and political action to undertake the complex task called for by these laws. We foresee a rapid change in their interest and capability to bring all the area within their borders under a comprehensive planning effort.

It is imperative that the use, development, disposal, and acquisition planning for Federal lands be an integral part of this effort, and that the institutions and procedures that control planning for Federal lands be adopted to facilitate the effort.

Until enactment of the Intergovernmental Cooperation Act of 1968,⁴⁴ statutory requirements to coordinate the planning and design of direct Federal programs that have a significant state, local, or regional influence were unevenly developed. Federal water resources project proposals formulated by the Corps of Engineers, Bureau of Reclamation, and the Soil Conservation Service were sent to the states for comments and views but, before enactment of the Water Resources Planning Act in 1965,⁴⁵ project coordination was little more than after-the-fact action. The states seldom had an opportunity to participate in project formulation. The 1965 Act provided the legal basis and organizational arrangements—the joint river basin planning commission—for states to participate with Federal agencies in water resources planning each step of the way from assessment of needs to multiproject design and analysis.

Statutory requirements for coordinating Federal public land activity with states and local government have been confined primarily to notification and soliciting of state views on proposed Federal land acquisition, with state approval required for some kinds of purchases. Beyond this, there has been little exposure of the Federal comprehensive land use planning process or the plans themselves to state and local government.

Title IV of the Intergovernmental Cooperation Act of 1968⁴⁶ provides, in part, that the President “. . . establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development.” The implementing regulations issued by the Bureau of the Budget⁴⁷ call for the establishment of procedures by Federal agencies administering programs for construction of Federal buildings and installations or other Federal public works, or for the acquisition, use, and disposal of Federal land and real property to assure:

1. Consultation with Governors, regional and metropolitan comprehensive planning agencies, and local elected officials at the earliest practicable stage in project planning in the relationship of any project to the development plans and programs of the state, region, or locality.
2. Consistency and compatibility of any such Federal project with state, regional, and local development plans and programs.

⁴⁴ 40 U.S.C. §§ 531-535; 42 U.S.C. §§ 4201, 4211-4214, 4221-4225, 4231-4233, 4241-4244 (Supp. IV, 1969).

⁴⁵ 42 U.S.C. §§ 1962-1962d-3 (Supp. IV, 1969).

⁴⁶ 42 U.S.C. §§ 4231-33 (Supp. IV, 1969).

⁴⁷ Bureau of the Budget Circ. No. A-95, July 24, 1969.

The Bureau of the Budget regulations also call for use of the state, regional, and metropolitan planning and development clearinghouses that have been established as part of the recent efforts to improve intergovernmental coordination in planning particularly for Federal grant-in-aid programs.

We fully endorse the intent of these efforts as they apply to intergovernmental coordination in public land use planning. However, there are several steps that can be taken to further the 1968 Act with regard to public lands that would assure early fruition of its intent with regard to bringing state and local government into the planning process.

To encourage state and local government involvement in the planning process in a meaningful way, as well as to avoid conflict and assure the cooperation necessary to effective regional and local planning, the Commission believes that consideration of state and local impacts should be mandatory. To accomplish this, *Federal agencies should be required to submit their plans to state or local government agencies.*

State and local zoning usually specifies uses permitted in designated areas. However, such zoning does not require any land owner to put his land into one of these uses against his interest or personal desire. Similarly, federal land agencies should not be required to permit a given use merely because the area has been so zoned by state or local authority.

On the other hand, federal agencies, as a general rule, should not allow uses on public land which are classified as undesirable under state or local zoning. There may be exceptions, however, and the federal agency should be authorized to allow such a use, but only when the agency makes a finding that overriding national interest requires the use.

The coordination which will be required if the Commission's recommendations are adopted is so basic and essential to effective public land use planning that it should be mandatory. Procedural requirements which are of sufficient importance to be dignified by statutory enactment should not be a matter of choice with the administering agency. If the adoption of such procedures is discretionary, and an agency chooses to ignore them, even the ability of the courts to intervene will be severely limited. *The Commission recommends, therefore, that Congress provide by statute that Federal action programs may be invalidated by court orders upon adequate proof that procedural requirements for planning coordination have not been observed.*

FINANCIAL ASSISTANCE TO STATES

Recommendation 14: Congress should provide additional financial assistance to public land states to facilitate better and more comprehensive land use planning.

If the public land states and local governments are to play a significant role with respect to Federal land use planning, their planning will have to be far better than it is today. The Commission study found an uneven performance by state and local governments in conducting their own planning programs.

The nonexistence or low calibre of some state and local planning may be attributed among other things to budgetary problems. While some funds are made available to encourage planning activities by state and local government under the Housing Act of 1954,⁸⁸ the availability of these funds is limited, and the Commission believes that, to the extent required, additional funds should be made available for planning encouragement in areas where Federal lands constitute a large part of the state and local land base. Federal funds should be available on a matching basis, with a major part contributed by the Federal Government.

NACO RECOMMENDATION FOR DELETION OF THE SECTION AUTHORIZING BLM EMPLOYEES TO CARRY FIREARMS, SERVE WARRANTS, MAKE ARRESTS, ETC., AND INSTEAD SUPPORT FOR THE SECTION ENCOURAGING COOPERATION WITH EXISTING STATE AND LOCAL LAW ENFORCEMENT ON PUBLIC LANDS

Section 302 of the Committee print and Section 307 of HR 5224 would authorize broad powers for BLM to establish its own police functions. NACO believes that the law enforcement authority for BLM should be improved for better

⁸⁸ 68 Stat. 590, codified in scattered section in Titles 12, 18, 20, 31, 38, 40, and 42 U.S.C. (1964).

land protection. However authority to establish such broad powers is not warranted and these sections should be deleted.

**NACO RECOMMENDATION FOR DELETION OF THE PROVISION IN THE WILDERNESS SECTION
REQUIRING TREATMENT DURING THE STUDY PERIOD OF ALL ROADLESS AREAS AS
WILDERNESS RATHER THAN ON A BASIS DETERMINED BY THE LAND USE MANAGEMENT
PROCESS**

Section 312 of the Committee Print would seem to freeze all roadless public lands into wilderness status even during the study period the section authorizes. NACo believes this would be inconsistent with the multiple use concept embodied in the proposed Act. This would also cause additional pressures for maximum resource development on those lands where roads already exist. NACo believes the land use process proposed by the Act would be a better vehicle for consideration of wilderness designation.

**FINANCING NATIONAL FOREST ROADS:
BACKGROUND INFORMATION FOR COUNTY GOVERNMENT POLICY**

(Prepared for discussion at the National Association of Counties' Western Region Conference, at Albuquerque, New Mexico, March 19-21, 1975.)

Road Systems Serving the National Forests

Road systems serving the National Forests are of two broad types. First, the forests are served by systems which are primarily intended to carry traffic through the forests between points outside the forest boundaries. These systems include the federal aid interstate, primary and secondary system, the federal aid Forest Highway System, and miscellaneous state and county roads not on any federal aid system. Except for the state and county roads, these systems are financed from the federal highway trust fund, plus state matching, and thus are primarily funded by user taxes and fees.

The second type consists of Forest Development Roads and Trails, which federal law defines as:

...those forest roads or trails of primary importance for the protection, administration, and utilization of the national forests, or where necessary, for the use and development of the resources upon which communities within or adjacent to the national forests are dependent. (23 USC 101)

Forest Development Roads and Trails provide access to National Forest resources, including timber and recreation areas, and otherwise provide for protection, utilization and management of forest resources. Draft material being proposed for inclusion in the Forest Service Manual would classify Forest Development Roads as follows:

1. Arterial Roads. These provide service to large land areas and usually connect with public highways or other arterial roads to form an integrated network of primary travel routes. The location and standard are often determined by a demand for maximum mobility and travel efficiency rather than specific resource management service. They are usually developed and operated for

long term land and resource management purposes and constant service.

2. Collector Roads. These serve small land areas and are usually connected to an arterial or public highway and collect traffic from service roads or terminal facilities. The location and standard are influenced by both long term multi-resource service needs as well as travel efficiency. Collector roads may be operated for either constant or intermittent service, depending on land use and resource management objectives for the area served by the facility.
3. Service Roads. These roads connect terminal facilities with collector or arterial roads or public highways. The location and standard are usually determined by that required to serve a specific resource activity rather than travel efficiency. Service roads may be developed and operated for either long or short term service.¹

Figure 1 illustrates each classification of Forest Development Road.

Methods of Financing Forest Development Roads and Trails

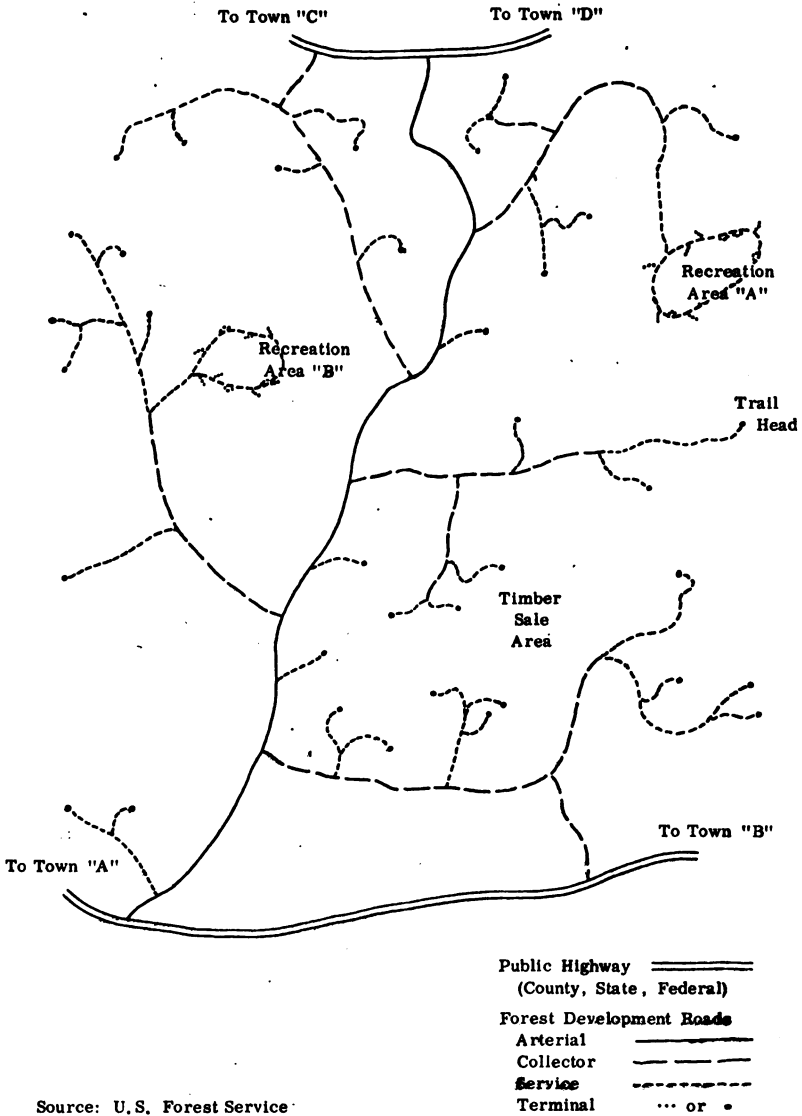
In the long run, the burden of financing the construction and maintenance of forest roads and trails is borne by the timber, consumers of forest products, and the general taxpayer. In the short run, however, financing comes from two main sources: (1) direct government financing, and (2) indirect financing from the purchasers of National Forest timber who are allowed credits against the price of the timber in return for financing the costs of the roads. The choice of financing methods has numerous consequences which are discussed in the final sections of this paper.

Direct Government Financing

Most of the direct government financing for Forest Development Roads and Trails is authorized under the biennial Federal Aid Highway Act. Unlike most of the appropriations authorized under the Highway Act, the Forest Roads and Trails appropriation comes from the general treasury rather than the highway trust fund.

1. U.S. Forest Service, Division of Engineering Management, untitled paper, n.d.

Figure 1
FUNCTIONAL CLASSIFICATION OF
NATIONAL FOREST ROADS



The other major source of direct government funding is the "ten per cent fund" established by 16 U.S. Code 501, which requires that 10 per cent of the receipts from the National Forests be spent for roads and trails within forests located in the states from which such proceeds are derived. In addition to funds authorized under the Highway Act and ten per cent funds, a relatively small amount of additional direct government financing is derived from miscellaneous sources, including funds contributed by users under maintenance agreements, a special allocation of receipts from timber sales from certain Oregon and California land grant lands within National Forest boundaries, and emergency funds for the repair of storm damage.

It should be noted that Forest Service road and trail obligations--the amount the Forest Service is actually allowed to spend from government funds¹--has, at least in recent years, been considerably less than the sum of the authorization, plus 10 per cent and "other" funds. Amounts authorized for the past ten years, along with the approved obligation level, are shown in Table 1.

Table 1

GOVERNMENT FINANCING AVAILABLE AND APPROVED OBLIGATION
LEVELS, NATIONAL FOREST DEVELOPMENT ROADS AND TRAILS
1967 to 1976

(millions)

	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>
<u>Authorizations:</u>										
Highway Act	\$ 85.0	\$170.0	\$170.0	\$170.0	\$170.0	\$170.0	\$170.0	\$140.0	\$140.0	\$140.0
Ten Per Cent	16.8	17.5	20.9	31.2	28.8	22.7	33.9	45.5	47.0	48.9**
Other	<u>1.4</u>	<u>1.8</u>	<u>3.8</u>	<u>11.9</u>	<u>11.3</u>	<u>8.4</u>	*	*	*	*
TOTALS	\$103.2	\$189.3	\$194.7	\$213.1	\$210.1	\$201.1	\$203.9	\$185.5	\$187.0	\$188.9
<u>Approved Obligation:</u>										
	\$118.4	\$122.7	\$120.4	\$163.8	\$175.1	\$170.8	\$160.3	\$140.2	\$171.1	\$158.3***

* Information not available.

** Estimate.

*** Requested.

1. Further discussion of obligations is presented below, pp. 5-7.

Financing Purchaser Construction

A second method of financing Forest Development Roads and Trails, utilized increasingly in recent years, is to require purchasers of National Forest timber to build roads which provide access to sale areas. When purchasers are required to build roads, the Forest Service credits the purchaser's account with the estimated cost of the road construction. When this method of financing is used, the Forest Service ordinarily does the pre-sale engineering and supervises the work, while the purchaser does the work with his own crews and equipment or hires a road contractor to do it. The Forest Service may supplement purchaser credit financing with direct government funds under certain circumstances. Under federal law,¹ purchasers can be required to participate only to the extent that would be necessary to provide access to harvest and remove the timber from the particular sale. Any additional road width, base, safety features, etc., which are required to provide for uses other than logging must be financed from sources other than purchaser credits.

Figure 2 shows the division of the appraised value of stumpage among various payments and allowances, including the "timber purchaser credit" which is allowed when purchasers are required to build access roads. As indicated by this pie chart, allowances are made in the appraisal not only for the estimated per-thousand board feet cost of the actual road construction, but also the cost of right of way clearing and portions of the overhead and profit and risk allowance which are related to the base cost of the road construction itself. Dollars actually paid to the government for the timber may therefore reflect only a minor proportion of the total stumpage value--a fact of considerable concern to counties which receive 25 per cent of the actual Treasury receipts, not 25 per cent of the total stumpage value.

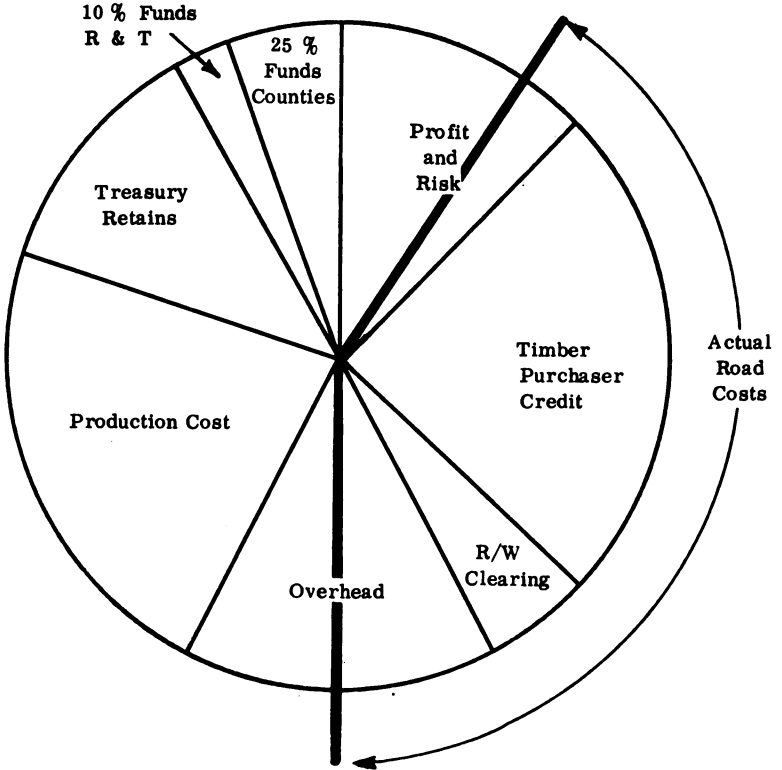
Budgeting Procedures

At the present time, development of the total National Forest Development Road and Trail program for each year involves both (1) biennial approval of an authorization level under the Federal Aid Highway Act by the Senate and House Public Works Committees; and (2) approval of annual program levels (obligations) by the House and Senate Appropriations Committees. Under federal law², National Forest Development Road and Trail authorizations are available for contract during the fiscal year preceeding and for two fiscal years succeeding the year of authorization as well as during the year of authorization. Unobligated authorizations lapse at the end of the second fiscal year after the year of authorization, and they may be rescinded before that time upon recommendation by the President and approval by Congress. The sums appropriated are the

1. 16 USC 535.

2. 23 USC 209.

Figure 2
 SELECTED COMPONENTS OF APPRAISED VALUE
 OF NATIONAL FOREST TIMBER



Source: U.S. Forest Service.

dollars needed to operate a level of contract authority previously determined by the Department of Agriculture and the Office of Management and Budget, and thus actual appropriations made by the Congress for Forest Development Roads and Trails serve only the function of providing cash to pay off contracts made pursuant to obligational authority. The purpose of using obligations as contract authority rather than appropriations is to provide for the lead time which must be available for engineering prior to construction, as well as construction time frames which do not conform to fiscal years.

To date, the authorization-obligation-appropriation process has applied only to the government financed portion of the total Forest Development Road and Trail program. Amounts of road construction to be financed through purchaser credits have been determined by the Forest Service and Department of Agriculture with the approval of the Office of Management and Budget, and without involvement of either functional or appropriations committees of the Congress. However, the Forest and Rangeland Renewable Resources Planning Act of 1974¹ will require a change in this procedure, beginning with the 1976 budget request. Section 9 of this new law provides as follows:

Sec. 9. Transportation System.--The Congress declares that the installation of a proper system of transportation to service the National Forest System, as is provided for in Public Law 88-657, the Act of October 13, 1964 (16 USC 532-538), shall be carried forward in time to meet anticipated needs on an economical and environmentally sound basis, and the method chosen for financing the construction and maintenance of the transportation system should be such as to enhance local, regional, and national benefits, except that for the financing of forest development roads as authorized by clause (2) of section 4 of the Act of October 13, 1964,² shall be deemed "budget authority" and "budget outlays" as those terms are defined in section 3(a) of the Congressional Budget and Impoundment Control Act of 1974 and shall be effective for any fiscal year only in the manner required for new spending authority as specified by section 401(a) of that Act. (Emphasis added.)

The underlined language does not prohibit financing of National Forest roads through purchaser credits. However, it will force a review of purchaser road program levels by the Appropriations Committees along with their approval of the direct government financed program level. It will also require the department to justify any failure to use the full amount authorized by the Highway Act while proposing the use of purchaser credits for Forest Roads construction and maintenance.

1. Public Law 93-378; 88 Stat. 476.

2. Clause (2) of section 4 of the Act of October 13, 1964 refers to roads financed through purchase credits.

Trends in Road and Trail Financing

Table 2 and Figure 3 reveal some significant trends and shifts in Forest Development Road and Trail financing over the past decade. During the mid-1960's, the National Association of Counties, in cooperation with several other groups, successfully urged the Public Works Committees of the House and Senate to increase substantially the authorization levels for National Forest Development Roads and Trails. Congress increased this authorization from an annual level of \$30 million in 1961 to \$85 million in 1965, and again to \$170 million in 1968 and for several years thereafter. Although the full amount authorized was never obligated, the obligation level did rise substantially during the late 1960's and early 1970's.

For a period of two or three years, there was some shifting in the emphasis of the program from purchaser credits to direct government financing, a shift made possible by the increased authorization and obligation level. This shift is reflected in the amounts obligated specifically for Forest Service road and bridge construction which increased considerably in 1970 and 1971, reaching a peak of \$110.5 million in fiscal 1972. Purchaser credits increased at about the same rate as Forest Service construction during these same years, but not as rapidly as they would have to reach the same total program level had the Forest Service not programmed this large increase in direct government financed road construction.

However, the policy of increasing emphasis on direct government financing changed suddenly in 1973 and 1974 as the Administration tried to respond to new demands not only to increase timber production on government lands, but also to minimize cash drains on the federal treasury. Substantial increases in purchaser credits were allowed by administrative action during those years, and this required a drastic shift in the programming of government funds from Forest Service road construction to pre-sale engineering (location, surveys, plans and supervision) of purchaser road construction. The Forest Service's justification of its fiscal year 1974 budget request stated:

The \$44,697,955 program decrease has been made possible by shifting priorities to timber access and by assigning a greater degree of responsibility for this access to the timber purchaser.... The shift in the proposed fiscal year 1974 forest road and trail program from direct construction to support activities for timber purchaser road construction is a result of increased timber needs, and the need to reduce Federal outlays.¹

The relative emphasis on purchaser credits and de-emphasis on direct government financing has continued to the present time.

1. House Appropriations Subcommittee Hearings, Department of Interior and Related Agencies Appropriations for 1974, Part 1, p. 591 (93rd Congress, first session).

Table 2

**ANNUAL OBLIGATIONS BY PROGRAM AND TOTAL AMOUNT OF PURCHASER
CREDITS, NATIONAL FOREST ROADS AND TRAILS**

1967 to 1976

(millions)

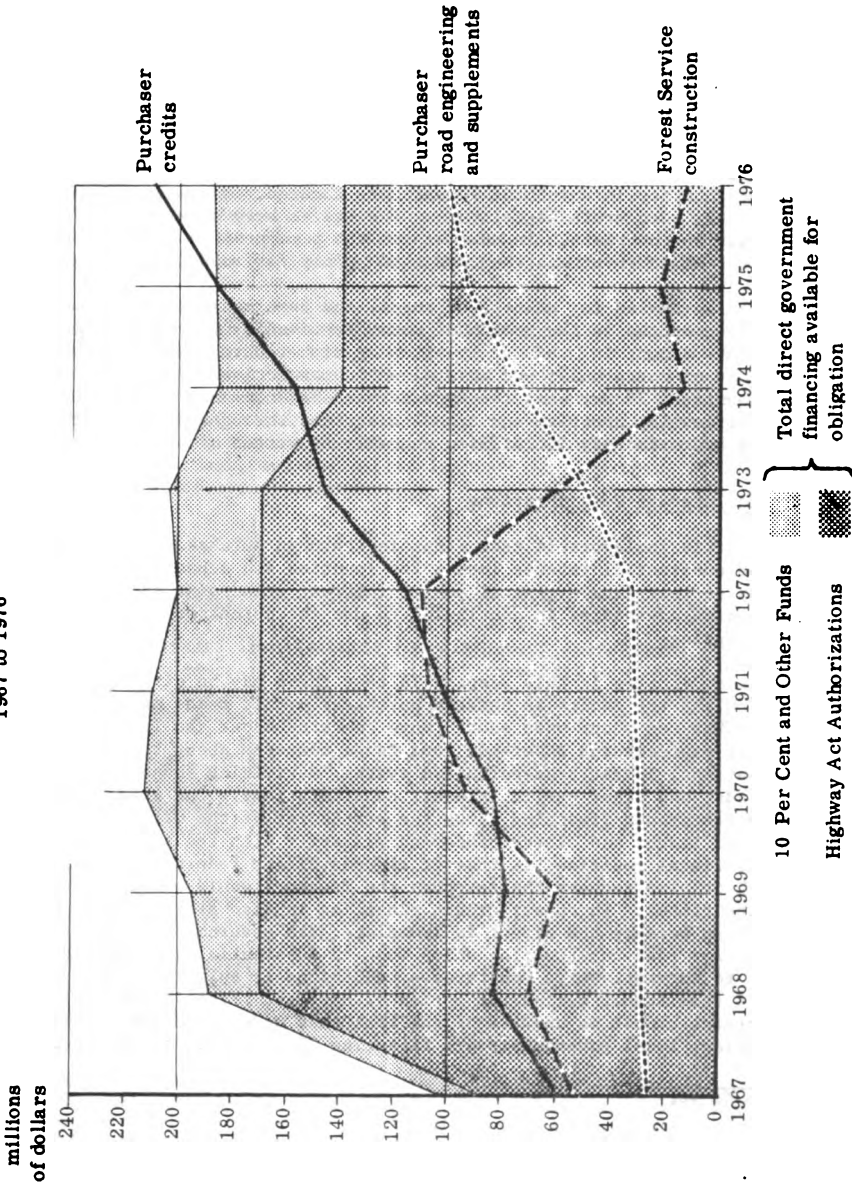
	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>
<u>Direct Gov. Financing</u>										
Road Construction	\$ 49.4	\$ 63.2	\$ 56.3	\$ 87.2	\$108.4	\$110.5	\$ 59.8	\$ 8.3	\$ 15.7	\$ 6.4
Bridge Construction	<u>3.1</u>	<u>7.1</u>	<u>4.1</u>	<u>7.2</u>	--	--	--	<u>5.0</u>	<u>6.1</u>	<u>5.5</u>
Subtotal, Forest Service Const.	52.5	70.3	60.4	94.4	108.4	110.5	59.8	13.3	21.8	11.9
Purchaser Road Engineering	20.4	20.0	22.0	22.2	23.0	23.4	39.6	70.5	85.2	93.4
Purchaser Road Supplements	<u>4.5</u>	<u>8.0</u>	<u>4.7</u>	<u>6.6</u>	<u>7.6</u>	<u>7.8</u>	<u>9.9</u>	<u>3.3</u>	<u>8.9</u>	<u>6.8</u>
Subtotal, Appropriated Funds spent on Construction by Purchasers	24.9	28.0	26.7	28.8	30.6	31.2	49.5	73.8	94.1	100.2
Maintenance, Trail Construction and Miscellaneous	41.1*	24.4	33.3	40.6	36.1	29.1	51.0	53.1	55.2	46.2
TOTAL OBLIGATIONS	\$118.4	\$122.7	\$120.4	\$163.8	\$175.1	\$170.8	\$160.3	\$140.2	\$171.1	\$158.3**
<u>Purchaser Credits</u>	59.4	83.1	78.7	82.6	102.2	116.8	146.9	157.4	187.4	210.0***
TOTAL ROAD PROGRAM LEVEL	\$177.8	\$205.8	\$199.1	\$246.4	\$277.3	\$287.6	\$307.2	\$297.6	\$358.5	\$368.3
<u>Exhibit: Purchaser Credits and Appropriated Funds spent on Purchaser Road Const. as per cent of Total Program</u>										
	47.4%	54.0%	52.9%	45.2%	47.9%	51.5%	63.9%	77.7%	78.5%	84.2%

* Included \$15.6 million in flood and earthquake damage repair and reconstruction.

** Requested.

*** Estimated.

Figure 3
TRENDS IN NATIONAL FOREST
ROAD AND TRAIL FUNDING
1967 to 1976



County and Public Interests

Impact of Purchaser Credits on County Revenues

Federal law¹ provides that 25 per cent of the money received from each National Forest is to be paid to the states within which the Forests are located, to be used for the benefit of public schools and public roads of the counties in which the Forests are located, in a manner to be prescribed by each state legislature. The states have provided a variety of distribution plans. In some states the payments are used mainly for schools, while in others they are used mainly for roads.

Whether earmarked for schools or roads, the base against which the 25 per cent is computed is the amount of money received by the federal government. When this amount is reduced by allowing timber purchasers credit for the cost of roads built and maintained in connection with timber sales, the counties' 25 per cent receipts are reduced commensurately. At present program levels, counties and school districts throughout the country are losing approximately \$50 million annually by virtue of purchaser credits.

Public Interest Considerations

While it is indisputable that financing through purchaser credits involves substantial revenue losses for counties and school districts, it may be that from a general public interest standpoint there are some offsetting advantages in continuing to use the purchaser credit method of financing.

One consideration in this respect is that there may be circumstances under which the choice is between purchaser credit roads or no roads at all. This can occur when short range concerns about the level of direct federal expenditures supersede long range concerns about the quality of the National Forest transportation system, maximizing economy in the use of roads, and other public interest considerations. One great virtue of purchaser credit financing, from the standpoint of the Office of Management and Budget and others concerned primarily with the federal government's fiscal position, is that it reduces direct federal outlays, even though it also reduces the revenues the Treasury would otherwise receive for the timber. Purchaser credit financing is also attractive in the short run because the effect is immediate; the government avoids a cash outlay for road construction which must be substantially completed prior to harvest, while the revenue reductions it suffers occur over a longer time frame, during the period of harvest. Finally, federal budgeteers cannot be unaware of the fact that under purchaser credit financing, local governments are financing 25 per cent of the costs of

1. 16 USC 500.

the roads, even though, as noted below, direct government financing might create conditions under which competition for federal timber would increase and raise the price enough to offset the loss of this involuntary local government contribution.

Another type of consideration favoring maintenance of some level of purchaser credit financing is that some type of spur road construction and maintenance is operationally inseparable from the purchaser's harvest operations themselves. Many purchasers build and maintain these roads with the same personnel and equipment they already have in the sale area for their harvest operations, and they also need to control the timing and to some extent the location of such road work to coordinate their total operations.

While considerations of the federal fiscal position and the operational requirements of timber purchasers suggest that some level of purchaser credit financing will have to be maintained indefinitely, there are several reasons to believe that the ratio of direct government financing to purchaser credit financing should be considerably higher than it is now. Among these are reasons relating to road standards, competition for timber, road locations, and the public interest in effective Congressional oversight of agency operations.

Road Standards

As indicated above, federal law provides that purchasers are not required to bear that part of the road costs necessary to meet a higher standard than that needed in harvesting the particular sale timber harvest. roads are generally single-laned with temporary drainage facilities, surfacing and structures. Roads of this type would be inadequate to serve the multiple uses to which our National Forests are put today, including general public recreation use, as well as uses for forest protection and management. Since under law the extra cost of multiple use roads cannot be borne by the purchaser,¹ some direct government funding is required to assure that timber sale roads (which will inevitably be used for multiple purposes regardless of their actual standard or condition) are built to adequate standards.

Another aspect of the temporary v. permanent multiple use road issue is that long range transportation economies often favor construction of high standard roads, the added cost of which is offset over a long period of time by reduced per-mile user costs. A 1962 study by engineering personnel of the Forest Service's Region 6 concluded that if access roads in Region 6 could be built to planned standards from 1962 to 1983,

1. Many purchasers allege, however, that they are in fact required to build roads to higher standards than the minimum necessary for the particular sale. Although the Forest Service does not require the purchaser to bear the cost of double laning or paving, differences may arise over base requirements, environmental protection facilities, etc.

savings in maintenance and hauling costs alone would amount to \$329.5 million, as compared with construction costs of \$282 million.¹

Effect on Competition

As commercial timber available for sale is found to a greater and greater extent in the more remote areas of the National Forests and in more rugged terrains, the relative cost of road building increases, and larger and larger sales must be put up to insure that there will be sufficient revenue to offset the cost of the roads. While this is probably only one of several factors which has produced the observed decline in the number of small mills and logging firms, it may be a significant one. Small operators experience great difficulty in obtaining even the short range capital necessary to finance large road construction expenditures prior to the time when they begin to realize a return on the sale of their logs or lumber products. This not only forecloses opportunities for small businessmen, but it may in the long run have an adverse effect on the price the government can command for its timber.²

Effect of Improved Access on Management

So long as road construction must be financed primarily through purchaser credits, it seems axiomatic that roads will be located in areas where the most promising opportunities exist for commercial timber harvesting. This virtually precludes the possibility of advance roading -- a policy generally favored by professional foresters which calls for development of a permanent road network throughout a forest, designed and built without the constraints of "prudent operator" standards but with an eye toward full utilization of forest potentials and maximum long range economy. Several advantages are claimed for an advance roading approach, including the possibility of salvaging mortality from fire, wind and insect or diseases (estimated at about two billion board feet annually for the National Forests); the increased fiber production that can be obtained through intensive management practices such as pre-commercial thinning; and the dispersal of recreation usage to avoid overcrowding of established recreation areas. Direct government funding of road construction will be required if these objectives are to be achieved.³

1. "Need for Development of Main Line Access Roads - Region Six," n.d.
2. See, Walter J. Mead, "Memorandum on Competitive Bidding for National Forest Timber in the Douglas-Fir Subregion," (prepared for the U.S. Department of Interior, Bureau of Land Management), September 17, 1965, p. 8. See also the extended questioning and discussion of the effect of road requirements on small operators in House Appropriations Committee, Hearings, Department of Interior and Related Agencies Appropriations for 1975, Part 3, pp. 103-109, 93rd Congress, second session).
3. Appendix A of this report excerpts a brief discussion of advance roading from a paper prepared by Carl Newport, a forest economist with the Portland firm of Mason, Bruce and Girard, for the President's Advisory Panel on Timber and the Environment.

Accountability

There is, finally, an apparent public interest in having funding decisions applicable to government programs made by responsible organs of the Congress. The present method of programming National Forest road construction and maintenance with purchaser credits avoids Congressional scrutiny and constitutes what some have called "back door financing." The new Resources Planning Act will greatly reduce this problem beginning with fiscal year 1976. However, some related problems will remain. For example, 23 USC 205 requires the Forest Service to contract road work estimated at more than \$15,000 per mile, but this does not apply to roads built by timber purchasers. Many purchasers are now having road contractors do their road work (especially as the complexity of construction increases in rugged terrain and with pressure for higher standards from the Forest Service), but these contracts are not necessarily let under the competitive bid procedures required by public contracting laws.

Finally, there may be something of a problem of accountability in assuring that purchasers required to build roads do not make windfall profits on the road work in addition to their normal profits on the timber operation itself. At the present time, the purchaser credits are allowed on the basis of estimates made at the time the project is engineered, and there appears to be no way for the Forest Service to audit actual costs experienced by the operator with an eye toward adjusting the allowances made on the basis of the estimate.

Toward a NACO Policy on Forest Road Financing

The National Association of Counties has been aware for a good many years that counties are losing substantial amounts of revenue as a result of purchaser credit financing of National Forest Development Roads. During the mid-1960's, NACO concentrated on trying to persuade the Congress to increase the Roads and Trails authorization in the Federal Aid Highway Act, assuming that such increases would be followed by a shift from purchaser credit financing to direct government financing of access roads. While the data presented above indicate that some such shift did take place for a few years, it seems clear that increasing the authorization alone does not insure that the drains on county funds will cease, as is amply illustrated by events of the early 1970's.

Enactment of the Resources Planning Act of 1974 does appear to set the stage, however, for a reconsideration of this issue, and now the members and staffs of the relevant Congressional committees will be directly involved in the choice of financing methods. It would appear to be a good time for NACO to review its policies on National Forest Development Road financing and perhaps to take the leadership in suggesting an approach that would be beneficial not only to county government, but

also to the Forest Service, the timber industry and the general public. NACO's Western Regional District could develop a proposed policy statement at its March 1975 meeting in Albuquerque, for submission and adoption by the National Association at its annual convention in June 1975.

Without attempting to suggest the details of such a proposed statement, a few possible alternatives come readily to mind. One approach would be to try to develop a workable, functional classification of forest roads and to identify the types of roads most appropriate for each type of financing. For example, there would be little argument that purchaser credit financing is appropriate for temporary spur roads located within the immediate sale area. On the other hand, permanent, two-lane hard surface arterials that carry not only logs but also high volumes of recreation traffic should be financed with appropriated funds. In between these extremes lie a number of types of roads and a variety of circumstances which, considering both short and long range factors, might tilt the judgment one way or another. Some effort to define these considerations might be made jointly by the parties involved which could produce some guidance to those who must select the financing method.

Another approach, perhaps easier to implement, would be to reach some general "rule of thumb" guidelines on the approximate ratio of direct government to purchaser credit financing that would be most suitable to different types of National Forests. Obviously, forests which contain little commercial timber are inappropriate for purchaser credit financing. It is possible that a scale from minimum to maximum purchaser credit financing ratios could be worked out and applied on a forest-by-forest basis.

Various other approaches are possible, and should be considered. Another type of approach, which considers only the problem of the counties' revenue losses, would be to adjust the formula for National Forest revenue sharing to recognize that the 25 per cent provided by law no longer means the same thing it did when it was enacted in the early 1900's. For example, the law might be amended to increase the percentage figure or to require an additional payment from the Treasury equal to 25 per cent of the amounts programmed annually for purchaser road construction.

Prepared by:

Kenneth C. Tollenaar, Director
Bureau of Governmental Research & Service
University of Oregon

For:
Association of Oregon Counties and
National Association of Counties

Appendix AExcerpt from¹**"Timber Sales Policies and Procedures on National Forests
in Relation to Shortrun Timber Supply"**

by Carl Newport

ROADS

"Roads are needed on national forests for expediting sales, increasing timber sale and harvest flexibility, and for improving utilization.

"Much of the time spent in selecting, planning, preparing, and operating timber sales is spent on roads. If the Forest Service were fully funded by appropriation for its road program and permitted to carry it out, the timber sale program would be expedited. Road construction by timber purchasers has limited road development to areas of high value timber and to periods of high prices.

"If a more complete road system were now in place on the national forests, it would be much easier for the Forest Service and the industry to promptly respond to fluctuations in demand for wood products. Submarginal timber could be sold, more partial cuts and more salvage and commercial thinnings could be made. In addition, more areas of timber needing treatment to increase growth would become accessible for such programs.

"Studies of advanced roading on national forests and on other public lands have concluded that it is not economic.⁶ However, these were tested against earning rate guides now being used on other Forest Service investments such as holding excess growing stock, K-V expenditures, and to some of the currently financed road program. Furthermore, these studies did not include the benefits of moderating lumber and plywood price fluctuations. In view of these factors the low earning rates of 2 to 6 percent for advanced roading appear to be more than sufficient justification for a significant program.

"It is recommended that the Forest Service more specifically document the cost of and resulting extra yield from more rapid roading on a forest-by-forest basis. This would provide the basis for grassroots pressure on Congress and OMB to get the necessary financing and would relate performance directly to extra timber supply, including the advantages of flexibility...."

⁶Payne, Brain R. "Accelerated Roadbuilding on the North Umpqua--An Economic Analysis," USDA Forest Service research paper, FNM-137, 32 pp., illustrates Pacific Northwest Forest and Range Experiment Station, Portland, Oreg., 1972.

1. Appendix G of Report of the President's Advisory Panel on Timber and the Environment, Washington, U.S. Government Printing Office, 1973, p. 222.

Mr. MELCHER. Tom Garrett is here. Not present? Chuck Clusen. Is Chuck Clusen here?

We will proceed now with Mr. Edwards. Mr. Edwards.

Mr. EDWARDS. Mr. Chairman. We would like to submit our statement for the record.

Mr. MELCHER. Without objection, Mr. Edwards' entire statement will be made a part of the record at this point. Hearing no objection, it is so ordered.

[The prepared statement of Howard L. Edwards follows:]

STATEMENT OF HOWARD L. EDWARDS, VICE PRESIDENT AND SECRETARY,
THE ANACONDA CO. ON BEHALF OF THE AMERICAN MINING CONGRESS

Mr. Chairman, and Members of the Committee: I am Howard L. Edwards, vice president and secretary of The Anaconda Company in New York City. My appearance before you today on the proposed Public Land Policy and Management Act, the proposed organic act for the Bureau of Land Management, is as chairman of the Public Lands Committee of the American Mining Congress.

The American Mining Congress is a national association of United States companies, large and small, that produce the greater part of our nation's metals, coal, and industrial and agricultural minerals. The member companies operate on public and privately owned lands in all of the fifty states. The American Mining Congress is thus directly concerned with the effects on the minerals industry by this proposed legislation.

The mining industry welcomes the recognition accorded by the proposed legislation of the need for improved and more efficient use of the 475 million acres of publicly owned lands managed by the Bureau of Land Management and the additional 300 million acres of federally owned land, on most of which the mineral ownership is also managed by the Bureau of Land Management. Mr. Chairman, our industry has followed with interest the development of the proposed legislation. Industry representatives have participated in the comprehensive field hearings held in many of the public lands states during the 93rd Congress. We have testified at hearings held here in Washington. We commend the members of this Committee for their dedication and fairness in affording so many of our fellow citizens of so many different shades of opinion an opportunity to be heard.

A year ago, in our appearance before this Committee, we expressed our opinion that it was not in the public interest to enact legislation that would make it difficult, if not impossible, to find and develop minerals on the public lands. We also expressed our opinion that the bill then pending, H.R. 5441, would tend strongly to do just that. We stated that the American Mining Congress had adopted a formal resolution recognizing the need for a basic Bureau of Land Management organic act, one that contributes to the management and better, more efficient uses of all the primary values and resources of the public lands, and observed that H.R. 5441 was not such a bill, but looked with optimism on the public statements that you, Mr. Chairman, would write your own bill.

Mr. Chairman, a great deal of progress has been made. Your bill, H.R. 16676, introduced late in the Second Session of the last Congress, corrected many of the deficiencies contained in H.R. 5441. Subcommittee Print No. 1, which is a refinement of H.R. 16676, would, in our judgment, with certain constructive amendments, form the basis for an acceptable charter for the management of the public lands by the Bureau of Land Management.

Mr. Chairman, we are pleased that the declaration of policy in Section 102 of Print No. 1 sets forth that it is the policy of the United States that the Mining and Minerals Policy Act of 1970, as it pertains to the public lands, be implemented. There has never been a clearer or less ambiguous statement of Congressional intent than the 1970 Mining and Minerals Policy Act. Notwithstanding the mandate of that act, the policy has been essentially ignored. Since its passage, the actions of the federal government, including those of the Bureau of Land Management, have tended to discourage, instead of encourage the exploration for, and development of domestic mineral resources. We believe that the legislative history on the Public Land Policy and Management Act should be perfectly clear that implementation of the Mining and Minerals

Policy Act, as it pertains to public lands, is an important objective of the legislation.

Next, Mr. Chairman, we are pleased the Print No. 1 contains, in Section 201(f) (1), a statement that "no provision of this Section, or any other Section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, except as provided in Section 207 of this Act."

Mr. Chairman, the mining industry, speaking through the American Mining Congress, for several years has been on record in favor of modernization and changes of the General Mining Law. A description of our recommendations has been set forth several times in the annual declaration of policy of the American Mining Congress and amendatory legislation to implement those changes has been introduced in the last two Congresses. Until, however, such amendments are made, it is important that any legislation relating to the management of the public lands specifically provide, as does Print No. 1, that it will not have the effect of amending the mining laws or impairing the rights of people claiming under the laws.

Mr. Chairman, I would like to comment on specific provisions and sections of the proposed bill, a number of which have the approval of the American Mining Congress and others, where, in our judgment, amendments should be made.

RECORDATION OF MINING CLAIMS AND ABANDONMENT

First, Section 207, requiring the recordation of mining claims, has the approval of the American Mining Congress. That Section requires the owner of an unpatented mining claim to file in the local recording office, usually the county recorder's office, documentation with respect to annual assessment work and also file a copy with the Bureau of Land Management. The owner of a claim would also be required to file a copy of the Notice or Certificate of Location with the Bureau of Land Management. For claims located prior to the date of the Act, these filings would have to be completed within three years, and for claims located after the date of the Act, the filings would have to be completed within ninety days. On the failure to file such instruments, the claims would be deemed abandoned.

We have previously supported such mining claim recordation requirements calling it "stale claims" legislation. Such a provision would have the effect of determining, as a matter of law, that stale claims, not recorded with the Interior Department, are abandoned. The effect of this type of provision would be to eliminate the impediment on titles caused by literally millions of abandoned mining claims. Over the years, the most persistent criticism of the general mining law has been directed to the build-up of the mining claims of record in which there is no present interest on the part of the claimants and no simple mechanism for terminating these claims. Such a provision would remove the principal criticism of the mining laws.

Mr. Chairman, I should mention that the proposed Natural Resource Lands Management Act pending in the Senate, S.507 contains a somewhat similar recording requirement for mining claims. Unfortunately, the Senate bill has coupled with the recording provision a requirement that an application for patent for mining claims be filed within five years. I mention this matter in the event that the subject should subsequently rise in a conference between the Senate and the House. The recording provision cannot be coupled with such a patenting requirement. First, it would be impossible for applications for a patent to be filed within five years for all of the active mining claims in the United States. Before an application can be filed, each claim must be surveyed by registered mineral surveyors, and plats of mineral survey must be prepared by the cadastral engineers of the Bureau of Land Management. Today, with limited activity, there are normal survey delays of two to five years. There simply are not enough mineral surveyors or cadastral engineers, nor could there be within that time frame. I would hazard a guess that, even if forces were doubled, the work could not be completed on as many as five percent of active mining claims. The second reason why the patent requirement is unreasonable is because of the policies of the Interior Department that discourage the patenting of claims. In 1971, 18 patents for 1,666 acres; and in 1972, 19 patents for 2,012 acres; and in 1973, 15 patents for 936 acres were all that were issued under the mining laws. In those years, the mineral patents covered a fraction of one percent of the lands patented by the Bureau of Land Management during that period. It is extremely difficult to meet the patenting

requirements as interpreted by the Interior Department, and many active mining operations continue on patented lands because of the judgments formed about patenting would be impossible.

Our support for the recordation requirement for mining claims is predicated on the retention of the language of Section 207, as contained in Print No. 1, without amendment.

WITHDRAWALS

Mr. Chairman, we commend the Subcommittee for the proposal contained in Section 204 relating to withdrawals of public lands. No segment of the private sector of our economy has been more adversely affected by the indiscriminate and wholesale, large-scale withdrawal of lands than the mining industry. It has been estimated that some 238 million of the 750 million acres of public lands have been withdrawn or carry some restrictions against mineral activity. Section 204 would restore to the Congress its constitutional role in the ultimate management of public lands. The size of withdrawals by the Executive branch would be limited without Congressional approval, and the length of time for which lands may be withdrawn is also governed. We do not believe this to be an unreasonable burden on the land management agencies and should insure against unwarranted segregations of public lands in the future, at the same time permitting the use of this mechanism for the protection of lands with unusual values.

CORRECTION OF PATENTS

Section 203(f) provides that following the issuance of a patent, the Secretary may correct such patents or documents where necessary. There is no question but that the Secretary should have authority to take remedial action to correct clerical, typographical or other errors, including errors in land descriptions. The Section could be strengthened, however, by providing that the authority to correct does not grant the authority to change any terms, conditions, covenants or reservations in the patent. The title to the land is grounded on the patent and the authority to make substantive changes after the fact should not be authorized.

CONVEYANCE OF RESERVED MINERAL INTERESTS

Mr. Chairman, Section 209 sets up a mechanism under which the title to severed mineral interests owned by the federal government may be conveyed to the surface owner on a finding that there are no known mineral values in the land, or that the reservation of mineral rights by the United States is interfering with appropriate non-mineral development, and that such development is a more beneficial use of the land than mineral development. There is, however, Mr. Chairman, a major conceptual problem with the procedure that is established. The Section requires that in the event that mineral interests are conveyed and that subsequently if mineral development activities are initiated, that the mineral interests will then revert to the United States.

The mineral industry is not as concerned with whether the mineral estates are owned by the federal government or by private land owners, as in the certainty of the ownership and the availability of such lands for exploration and, where warranted, mineral development.

Under Section 209, it is contemplated that lands where there are no known mineral values will be the lands generally subject to the conveyance of reserved mineral interests. This does not preclude the development of subsequently discovered mineral values at a later date. If a land owner has title to the minerals, but subject to a reverter to the government, there is no way that he will authorize exploration or development on his lands. Since the government will not own the mineral estate, there is no way that the government can permit exploration and development. The effect of Section 209 is that conveyed previously-reserved mineral interests will, for all practical purposes, be unavailable for mineral development from the date of the conveyance forward. We doubt that this is the result intended by the authors of the legislation. We recommend that the reverter requirement be eliminated from the legislation.

RIGHTS-OF-WAY

Mr. Chairman, Title V, relating to rights of way, could have a most profound impact on the mining industry. At the present time, public lands covered by the proposed Act are accessible to all citizens for exploration and development. Also, at the present time, there is, in the Department of the Interior, recogni-

tion of the Common Law doctrine of the implied right of a mining claimant to access to his claim. If access to the public lands for these purposes becomes discretionary, instead of a right, there will serious interference to the exploration activity in the United States. Individuals and small mining companies, especially, who do not have the resources or the time to cope with the complicated right of way application procedures, will be discouraged.

Mr. Chairman, in fairness, our discussions of proposed Title V have not been conclusive. We are uncertain whether the Section would completely replace the existing right of entry under the mining laws. However, on reading this Section, we can find no express language that such right of entry would not be affected. We recommend that Title V be amended to clarify that the right of ingress and egress onto the public lands under the mining laws is preserved. In this connection, I should mention that the recently-promulgated regulations of the United States Forest Service relating to mining acknowledge a right of access to Forest Service lands for mineral development, but do contain provision for reasonable regulation of the route and means of ingress and egress.

WILDERNESS STUDY

Mr. Chairman, Section 312 requires a wilderness study on roadless areas of 5,000 contiguous acres or more. The savings clause permitting the continuation of *existing* mining and grazing uses will not prevent the Act from creating vast areas of instant wilderness. Consider, Mr. Chairman, the effect of the provision in, say, Nevada. A large proportion of the state would be administered during the study period in a manner so as to preserve the wilderness character of each area. It is reasonable to conclude that no new exploration would be permitted or any other activity that might by some court be construed as inconsistent with wilderness. Essentially all the public lands in Alaska would become instant wilderness, as well as large areas in Montana, Utah, Arizona and the other public land states. We doubt that this result is intended. We object to the Section 312 as presently written.

Mr. Chairman, on behalf of my colleagues in the mining industry, I thank you for the opportunity to comment on this important legislation.

In closing, I would like to offer to your Subcommittee the assistance of the members of our public lands committee and staff members of the American Mining Congress in developing language changes to effect the suggestions we have made today. The membership of our Public Lands Committee includes several of the pre-eminent authorities on public land and natural resources matters, and I believe they can make an important contribution.

STATEMENT OF HOWARD L. EDWARDS, VICE PRESIDENT AND SECRETARY, THE ANACONDA CO., ON BEHALF OF THE AMERICAN MINING CONGRESS

Mr. EDWARDS. Mr. Chairman, the mining industry welcomes the recognition accorded by the proposed legislation of the need for improved and more efficient use of the 475 million acres of publicly owned lands managed by the Bureau of Land Management and the additional 300 million acres of federally owned land, on most of which the mineral ownership is also managed by the Bureau of Land Management.

We follow with interest the development of this proposed bill. We participated in field hearings held in many of the public land states during the last Congress. We have testified here in Washington. We commend the committee for their dedication and fairness in affording so many of our fellow citizens of so many different shades of opinion an opportunity to be heard.

Mr. Chairman, a year ago when we appeared before this Committee, we expressed our opinion that it was not in the public interest to enact legislation that would make it difficult, if not impossible, to find and develop minerals on the public lands. We also

expressed our opinion that the bill then pending, H.R. 5441, would tend strongly to do just that.

We indicated that the American Mining Congress had passed a resolution favoring the concept of Bureau of Land Management organic act, but we did not think H.R. 5441 met our needs, but we looked forward with optimism to your statements, Mr. Chairman, that you would write your own bill.

Since that time a great deal of progress has been made. We believe that Subcommittee Print No. 1 would, with certain constructive amendments, form the basis for an acceptable charter for the management of public lands by the Bureau of Land Management.

In commenting on the bill, first I would like to say that we are pleased with the declaration of policy which sets forth that it is the policy of the United States that the Mining and Minerals Policy Act of 1970, as it pertains to the public lands, be implemented. There has never been a clearer or less ambiguous statement of congressional intent than the 1970 Mining and Minerals Policy Act.

Notwithstanding that act, the policy has been essentially ignored. Since its passage, the actions of the Federal Government including those of the Bureau of Land Management, have tended to discourage, instead of encourage, the exploration for, and the development of, domestic mineral resources.

We believe that the legislative history on the Public Land Policy and Management Act should be perfectly clear that implementation of the Mining and Minerals Policy Act, as it pertains to public lands, is an important objective of the legislation.

Next, Mr. Chairman, we are also pleased that the print No. 1 contains a statement that "No provision of this section, or any other section of this act, shall in any way amend the mining law of 1872 or impair the rights of any locators or claims under that act, except as provided in section 207" which relates to the recording of mining claims.

Mr. Chairman, the Mining Congress for years has been supporting proposals for modernization and changes in general mining law. The description of these recommendations has been set forth a number of times in our annual declaration of policy and legislation has been introduced in the last two Congresses to implement these modernization changes, but until the appropriate amendments are made to change the general mining laws, it is important that any legislation relating to the management of public lands, such as committee print No. 1, provide that nothing in the bill would have the effect of amending the mining laws or impairing the rights of people claiming under the laws.

I would like to comment on some of the specific provisions of the bill, a number of which have the approval of the American Mining Congress and some others where, in our judgment, amendments should be made.

First, I would like to turn to section 207 which relates to the recordation of mining claims. Section 207, which requires the recordation of mining claims, Mr. Chairman, does have the approval of the American Mining Congress. We have previously supported some mining claim recordation requirements. We call it stale claims

legislation. This type of provision would have the effect of determining, as a matter of law, that stale claims not recorded with the Interior Department are abandoned. The effect would be to eliminate the impediment on titles of literally millions of abandoned mining claims.

Over the years, perhaps the most persistent criticism of the general mining law has been directed to the buildup of the mining claims of record in which there is no present interest and on which there is no simple mechanism for terminating the claims. The provision contained in this bill would remove this principal criticism of the mining law.

I would like to mention—and I have covered it in some detail in my statement—that the Natural Resource Land Management Act pending in the Senate contains a somewhat similar recording requirement, but, unfortunately, the Senate bill has coupled with it a requirement that an application for patent for mining claims be filed within 5 years. We regard this, for reasons I set forth in some detail in this statement, as an impossible requirement. I raise the issue because of the possibility that that issue should arise in a conference between the House and the Senate.

Our support of this recordation requirement for mining claims is really predicted on retention of the language in section 207 of print No. 1, as it is now written, without amendment.

Next, I would like to mention the section relating to withdrawals. We commend the subcommittee for the proposal contained in section 204 relating to withdrawals of public lands. No segment of the private sector of our economy has been more adversely affected by the indiscriminate and wholesale, large-scale withdrawal of lands than the mining industry.

It has been estimated that some 238 million of the 750 million acres of public lands have been withdrawn or carry some restrictions against mineral activity. Section 204 would restore to the Congress its constitutional role in the ultimate management of the public lands. The size of withdrawals by the executive branch would be limited without congressional approval, and the length of time for which lands may be withdrawn is also governed.

We do not believe this to be an unreasonable burden on the land management agencies and should insure against unwarranted segregations of public lands in the future, at the same time permitting the use by the Bureau of Land Management of this mechanism for the protection of lands with unusual values.

Mr. Chairman, section 203 provides for the correction of patents. It is kind of a minor matter, but we do believe that the Secretary should have authority to take remedial action to correct clerical, typographical, or other errors in patents, but we think that this section could be strengthened by providing that the authority to correct does not grant the authority to change any terms, conditions, covenants, or reservations in the patent. The title to the land is grounded on the patent and the authority to make substantive changes should not be authorized.

I would also like to refer to the section provided for the conveyance of reserve mineral interest. I know that this is a subject that has a great deal of interest in areas of the West where the surfaces

and private ownership in the minerals are retained by the Federal Government.

This bill sets up a mechanism under which these several mineral interests can be conveyed to the surface owner. There is a major conceptual problem with the procedure of this bill. The section that requires that in the event that mineral interests are conveyed and subsequently if mineral development activities are initiated, the mineral interests will then revert to the United States.

In our industry I guess we are not as concerned with whether the minerals are owned by the Federal Government or private land-owners, as we are in the certainty of the ownership and the availability of such lands for exploration and, where warranted, mineral development.

Now here is what would happen, the way this section is written. It is contemplated that lands where there are no known mineral values will be the lands generally subject to the conveyance of reserved mineral interests, but this does not preclude the development of subsequently discovered mineral values at a later date. If a land-owner, however, has title to minerals, but subject to a reverter to the Government, as a practical matter there is no way that he is going to authorize exploration or development on his lands. And, since the Government does not own the minerals, there is no way that the Government can permit exploration or development. So, the effect of this section is that conveyed previously reserved mineral interests will, for all practical purposes, be unavailable for mineral development from the date of the conveyance forward.

We recommend that the reverter requirement be eliminated from the legislation.

The next subject I would like to refer to is rights-of-way, title V. Title V relating to rights-of-way could have a profound impact on the mining industry. Public lands, at the present time, are accessible to all citizens for exploration and development. Also, the Department of the Interior recognizes the common law doctrine of the implied right of a mining claimant to have access to his claim. If access to the public lands becomes discretionary instead of a right, there will be serious interference to the exploration activity in the United States.

Individuals and small mining companies especially who do not have the resources to cope with the complicated right-of-way application procedures will be discouraged.

Now, as we have looked at title V our discussions are not conclusive. We think that there are some ambiguities. We are uncertain whether this section would completely replace the existing right of entry under the mining laws. We read the section and we can find no express language that such right of entry would not be affected, so we recommend that title V be amended to clarify that the right of ingress and egress onto the public lands under the mining laws is preserved.

In this connection, I should mention that recent Forest Service regulations relating to mining acknowledge a right of access over Forest Service lands for mineral development, but they do contain provision for reasonable regulation of the route and means of ingress and egress.

Finally, Mr. Chairman, I would like to refer to section 312 relating to wilderness study. This section requires a wilderness study on all roadless areas of 5,000 contiguous acres or more. There is a savings clause in this section permitting the continuation of mining and grazing uses during this period when the wilderness study has taken place. But, if we consider the effect of such provision in a State, for example, like Nevada, a very large proportion of this State would be administered during the study period as required by the act in a manner so as to preserve the wilderness character of each area.

It is reasonable to conclude that no new exploration would be permitted or any other activity that might, by some court, be construed as inconsistent with wilderness. Essentially, all the public lands in Alaska would become instant wilderness, as well as large areas in Montana, Utah, Arizona, and other public lands States. We doubt that this result is intended. We object to section 312 as it is presently written.

Mr. Chairman, that is all that I have. I would like to state that we, on behalf of the American Mining Congress, that we would offer to the subcommittee the assistance of members of our public lands committee and staff members of our organization in developing language changes to effect the suggestions that we have made today. We have a number of preeminent experts on public lands. We believe we could make a contribution.

Thank you.

Mr. CLAUSEN [presiding]. Thank you, sir, for your very precise statement. It certainly spells out your position.

Mr. SKUBITZ. I have two questions that I would like to ask the witness.

On page 6—no, it is on page 7—you speak of the matter of withdrawals and estimating some 238 million of the 750 million acres of public lands would be withdrawn. Section 204 would restore to Congress its constitutional role in the ultimate management of the public lands.

It comes to mind, as I look around this committee today, whether we are in a position to really act in this area. There is nobody here except Mr. Clausen and myself at this particular moment. I wonder whether or not we should regain our constitutional authority to carry on in this particular field.

Mr. EDWARDS. My judgment—

Mr. SKUBITZ. You do not have to answer it.

Mr. EDWARDS. I would like to comment on that.

Mr. SKUBITZ. No, I think we would be striking that from the record.

Mr. EDWARDS. OK.

Mr. SKUBITZ. Seriously, on page 10 of your testimony, you express concern about the right of ingress and egress in mining claims, and I am wondering is this not covered by the land use on page 13 of Subcommittee Print No. 1, which provides that nothing in this act shall amend or impair the rights granted under the 1872 mining law.

Mr. EDWARDS. It may be, and, in fairness, we would have to say that what I mention in my section of my statement is that we feel it is ambiguous. We do not know whether this right would be abol-

ished or not, and, perhaps, section 13 would take care of it. Now, one way this could be clarified——

Mr. SKUBITZ. Could you tell me what we should do in the subcommittee print to make sure of it?

Mr. EDWARDS. I would say that there are two types of things that could be done. One would be a statement in the hearing record by the members of the subcommittee that it is their intent that nothing in this act will interfere with this right of ingress and egress mining claims, and another possibility would be a specific statement somewhere in the act to the same effect that not only does nothing in the act interfere with the operation of mining law, but also the specific concept of ingress and egress to mining claims.

The mining law, I might say, does not specifically cover ingress and egress to mining claims. It is a common law right which has been recognized by the Interior Department by decisions fostered by the Interior Department and court decisions, but it is not specifically spelled out in the law, so we would like either an amendment to the law, or something in the record on the legislative history of the law.

Mr. SKUBITZ. You mean a statement in the section dealing with right-of-way?

Mr. EDWARDS. It could be in the section that is on page 13 of the bill, somewhere in the bill, I am sure. It could be enacted.

Mr. SKUBITZ. On page 8 of your testimony dealing with section 203, you make the statement, "There is no question but that the Secretary should have authority to take remedial action to correct clerical, typographical, or other errors," but then you go on to say that, the section could be strengthened, however, by providing that the authority to correct does not grant the authority to change any terms or conditions. Well, I agree with that, but has that happened in the past? Can you give me some examples that have caused this concern in your mind?

Mr. EDWARDS. No; the thing that has caused the concern in our mind is the language in this bill which gives the Secretary the authority to make corrections, and we just believe that the record should be clear that those corrections do not extend to substantive matters in any patent.

Mr. SKUBITZ. What is the reason for your concern? Has something like that been done in the past, or are you starting to reach into clauses and pull things out?

Mr. EDWARDS. On that question of correcting the patent itself, I do not know any for instances. The only thing that raises my concern here is the language in section 203 that gives authority to correct patents, but it does not really limit it to clerical or typographical matters. It gives blanket authority for correction of patents.

Mr. SKUBITZ. Well, is it reasonable to assume that in the correction that they are going to change the meaning or the real intent that Congress expressed? What, in the past, gives you the feeling that they would do this in the future?

Mr. EDWARDS. I do not know of any case for it, and we have had a problem with actual correction of patent, but I do see some things taking place in the Interior Department today that could lead to

this. For example, I know of an action pending right now by the United States against some oil shale patent teams where they are seeking to set aside a patent that was issued more than 20 years ago, and so, while everybody thought they had good title, you know—

Mr. SKUBITZ. Well, setting aside is one thing, but making corrections is another.

Mr. EDWARDS. The only problem that we have in this is the language of the bill itself that gives authority to correct, but does not limit it merely to clerical and typographical errors. Maybe, it is clear enough.

Mr. CLAUSEN. It may be that we could have further clarification from you on how you define substantive changes. It is clear to me that you do recognize that there is a need to give them broad authority in basically small areas, typographical and other, but how you define substantive changes—

Mr. EDWARDS. I would say changes in reservations in the patent, reservations on mineral rights, maybe changing it to remove a reservation or to add a reservation at a later date—that would be a substantive change. This should not be permitted at a later date, after a patent is issued.

Mr. SKUBITZ. I think it is implied when we write legislation giving them the right to make technical changes, but that does not give them the right to change the whole law. I hate to think that the Congress, without something having happened in the past, should write into this bill, that we mean this and we mean this, you cannot do this, that, and the other.

Mr. EDWARDS. Perhaps, your statement and your hearing to that effect is all we will need.

Mr. CLAUSEN. Counsel has just brought to my attention a point that I would present to you and ask for a response. In the Eastern wilderness bill last year, we provided that low study areas in the East would be designated by Congress.

Would this type of provision for BLM lands satisfy your objections to the wilderness study section?

Mr. EDWARDS. Well, I am not sure that this would completely satisfy it. We are concerned with withdrawal of the segregation of lands. There are a couple of cases pending right now where lands are being set aside for study of the wilderness characteristics, to the effect that they would be withdrawn for mineral injury.

There is the Shelton Antelope Range and the Charlie Russell proposed wilderness area, where just the designation of these areas for study has the effect of segregating them from mineral entry.

We do not think it is in the national interest to do this. Now they should be set aside, or segregated from mineral entry, after they are designated as a wilderness area, but not before.

I do not believe it would satisfy the national interest requirement.

Mr. CLAUSEN. Does the gentleman from Kansas have any more questions? I think that most of the questions have been asked, and there was a suggestion that you would be pleased to lend your expertise of your associates to offer their suggestions for provisions consistent with your testimony so that not only the staff, but membership, could review and analyze those recommendations that you think would be appropriate for change. Is that correct?

Mr. EDWARDS. Yes, I made that offer.

Mr. CLAUSEN. Does counsel have any questions?

Mr. SHAFER. I would just like to be a little more specific, Mr. Clausen, and have Mr. Edwards draw on this reservoir of talent that is in the mining industry to give us some specific recommended language on at least these three points—one on the wilderness study, the one on conveyance of reserved mineral interests, and the correction of patents.

Could you, rather than giving us a philosophical discussion, could you give us hard languages on that?

Mr. EDWARDS. W will be pleased to do that. I think that would be very good.

Mr. SHAFER. We are going to be pushed for time. Could we get it, say, within the next week, or less than that?

Mr. EDWARDS. Yes, we can.

Mr. CLAUSEN. This is precisely what I had in mind. I am glad you made is more specific, Mr. Shafer.

Mr. Rock, do you have any more questions?

Mr. ROCK. No.

Mr. MELCHER. I have one, for clarification of Mr. Edwards position. You express some concern over which areas might be designated as a wilderness or might be set aside for wilderness, such as the C. M. Russell Game Range.

What evidence of minerals is there? You know that land has been available for exploration, examination. Is it hard to get at? What indication is there that there are minerals present?

Mr. EDWARDS. The problem is, we do not know whether there is any mineral there and the Geological Survey, all of their work over the years in examining these proposed wilderness areas, are the first to admit that their examinations are insufficient. They do not have the money, or the time, or the resources to really do this.

And, just because there is no mineral activity at the present time, or no present interest in exploration, does not mean in 5 or 10 years that conditions would not completely change and we can cite many examples of this all over the West.

We can cite examples where large areas of land would be declared nonmineral in character, maybe 25 years ago, and there is an operating mine there today. Or, interests have developed in some new types of minerals, new minerals where there is high aluminum content where you may be able to produce aluminum from sources other than bauxite which may just look like clay today and can be a source of very valuable metals in a few years.

Mr. MELCHER. Mr. Edwards, I think you might do this committee and the whole country a big favor by documenting these "many instances," because we are not, frankly, discovering in our hearing process the many instances you refer to where an area has been overlooked and then presto you have a valuable mineral that needs to be developed.

Now, if you can document those, it would be of great interest and it would be of great service to the country. It would be better than this discussion, or alleged set of facts that we are not aware exist.

Mr. EDWARDS. Well, I can mention two types of examples and we will be glad to do more work on this, but one is the Great Mission

Open Pit Copper Mine south of Tucson which is on lands that were conveyed to the State of Arizona in the 1920's and declared of non-mineral character by the U.S. Geological Survey. It is a very important mine today.

In other areas, the uranium lands in the Powder River Basin in Wyoming, you know, 25 years ago nobody knew there was any uranium there. It just appeared to be flat or rolling range land. Now there are uranium mines there.

Mr. SKUBITZ. Will the gentleman yield?

Mr. MELCHER. Yes.

Mr. SKUBITZ. It had no value at all 50 years ago.

Mr. EDWARDS. That is right. A lot of land, at the end of World War II, you could buy for 62½ cents an acre and they have operating mines on them, and we could put together some information on these types of areas.

Mr. MELCHER. I wish you would. It is pertinent, because that statement is made frequently by people who are connected with the mining industry. But we are simply not aware, through the hearing process, that there have been enough instances to make the general flat statement, would be relevant. We do not have any questions about the need of the country for a critical mineral, and that such a mineral does exist somewhere. But we cannot be constrained in designating wilderness areas to retain wilderness characteristics, by the possibilities that sometime in the future there might be minerals there.

We recognize that if there would be such a critical need for minerals, probably a portion of the wilderness area would be looked at again, if that is in the national interest. We do not think that we ought to be constrained on designation of the wilderness, on some faint possibilities—

Mr. CLAUSEN. Would the gentleman yield?

Mr. MELCHER. Yes. I yield to the gentleman from California.

Mr. CLAUSEN. I wonder if the witness could clarify for me whether or not his concerns are of national scope? Or, does this center around the fact that as we increase our ability to inventory the resources in advance technology and new kinds of equipment—infrared equipment and so forth—is there some reason to believe that we are going to be able to more adequately inventory our resources?

I am just trying to lead you to the point.

Mr. EDWARDS. Inventorying our resources is important management to inventorying surface resources and is, of course, much easier to perform than inventorying mineral resources. And, really, this is the kind of limitation we have. The only way we can inventory mineral resources is in those areas where there are existing mines, or known mineral occurrences.

Of course everything else is under the ground, and at this point even with our space technology we are unable to inventory, or even project, where the minerals may be. We are extremely limited and this creates a problem.

There is another problem associated with this. I guess my interest is primarily the area of metals. This is the area that my company is involved in, and many of the mining companies who are members of our association.

The same geological factors that created mountains, which is usually the prime area for designation of the wilderness, are the same

forces that permitted the deposition of minerals and so a great number of our metal mines we find in the mountains. So the two go hand-in-hand.

The asthetic appeal of land for wilderness also happens to be in the most geologically favorable areas for mineral deposition, and this creates kind of a double problem.

Mr. CLAUSEN. Could not ERDA submit the portion of a study—could not some of this information be brought into the course of the study prior to the date of the designation of the wilderness area?

Mr. EDWARDS. All of this information is helpful. You can sometimes draw inferences that the conditions are right; that there could be mineral deposition, but there is really only one way to know, and that is you have to look. Eventually you have to drill a hole. And, until you drill a hole, you do not really know.

Mr. MELCHER [presiding]. Thank you very much, Mr. Edwards. We appreciate your testimony.

I am going to make sure that we do not have somebody that is from out of town. If so, we will make sure we hear from them today.

[Letter dated April 28, 1975, from Mr. Edwards to Chairman Melcher follows:]

AMERICAN MINING CONGRESS,
April 23, 1975.

HON. JOHN MELCHER,
Chairman, Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to your request of April 11 when I testified before the Subcommittee in regard to Subcommittee Print No. 1 of the BLM Organic Act, enclosed are four suggested amendments. These amendments would, if adopted by the Subcommittee, rectify the problems that I brought to your attention during my testimony.

Sincerely,

HOWARD L. EDWARDS,
Chairman,
AMC Public Lands Committee.

Enclosures.

Amendment No. 1—Offered by Mr.——

SALES

Section 203(f) is amended as follows:

SEC. 203(f). The Secretary of the Interior shall issue all patents or other documents of conveyance after any disposal authorized by this Act. The Secretary shall insert in any such patent or other document of conveyance he issues, except in the case of land exchanges, for which the provisions of subsection 206(b) of this Act shall apply, such terms, covenants, conditions, and reservations as he deems necessary to ensure proper land use and protection of the public interest. The Secretary may correct *typographical and clerical errors (including errors in land descriptions)* in such patents or documents where necessary. In addition, the Secretary may make *such* corrections on any documents of conveyance which have heretofore been issued by the Federal Government on public lands.

Section 203(f) provides that following the issuance of a patent or other document of conveyance, the Secretary may correct such patents or documents where necessary. Although the Secretary should clearly have the authority to correct clerical errors, he should not have the authority to make substantive changes in the purchaser's ownership rights after the sale has been completed. This amendment, therefore, clarifies the extent of the Secretary's power to make changes in the patent by specifying that it extends only to clerical and typographical errors (including errors in the land description).

Amendment No. 2—Offered by Mr.———

CONVEYANCE OF RESERVED MINERAL INTERESTS

Section 209(c) is amended as follows:

SEC. 209(c). The document of conveyance for any mineral interests transferred pursuant to this section shall provide that, in the event that mineral development activities are initiated *within ten years of the effective date of the conveyance*, the mineral interests of the owner or owners of the parcel of land on which such activities are initiated, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, shall revert to the United States.

Under Section 209, reserved mineral rights may be conveyed to the surface owner where there are no known mineral rights or where reservation of these rights by the United States will interfere with non-mineral uses. Section 209(c), however, requires that the mineral rights revert to the United States if any development of the mineral interest is ever undertaken. As a practical matter, this will prevent any development of subsequently discovered minerals, because no surface owner would permit exploration or development if title to any deposits that were discovered would immediately revert to the government.

This amendment is designed to balance the government's interest in maintaining ownership rights in federally owned minerals, the surface owner's interest in the development of the surface, and the public's interest in the development of mineral reserves which may be discovered in the future. If the surface owner initiates mineral development within ten years of the conveyance of the reserved interests, the mineral estate will revert to the government. After ten years, however, the government's right of reverter is extinguished and the development of subsequently discovered mineral deposits will be possible.

Amendment No. 3—offered by Mr. ——

LAND USE PLANNING

Section 202(f) is amended as follows:

SEC. 202(f) (1). In managing the public lands under a land use plan the Secretary shall regulate, through permits, licenses, leases, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands. The Secretary shall permit hunting and fishing on lands and waters under his jurisdiction within the boundaries of the public lands in accordance with applicable laws of the United States and the States wherein the lands and waters are located, except the Secretary may designate zones where, and established periods when, no hunting and fishing shall be permitted for reasons for public safety, administration, or public use and enjoyment. Except in emergencies, any regulations of the Secretary pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any Federal law relating to migratory birds. No provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights (*including rights of ingress and egress*) of any locators or claims under that Act, except as provided in section 207 of this Act.

This amendment is designed to clarify the impact of Title V, relating to the regulation of rights of way, on existing law. At the present time, all public lands covered by the proposed Act are accessible to all citizens for exploration and development. If Title V were construed as giving the Secretary a discretionary authority over the right to enter public lands, exploratory activity in the United States will be seriously disrupted. This amendment makes clear that existing rights of entry under the mining laws will be preserved.

Amendment No. 4—Offered by Mr. ——

BUREAU OF LAND MANAGEMENT WILDERNESS STUDY

Section 312 is amended as follows:

SEC. 312(a). *The Secretary shall conduct a preliminary review of those roadless areas of 5,000 contiguous acres or more and roadless islands of the public*

lands administered by him through the Bureau, and shall report to the President his recommendation as to the suitability or unsuitability of each such area or island of the public lands for inclusion in the Wilderness Study required by this section, together with his recommendations for the authorization of appropriate funds to conduct the Study. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to the inclusion of each area in the Wilderness Study. A recommendation of the President for inclusion in the Study shall become effective only if so provided by an Act of Congress. At the expiration of three years from the submission to Congress of the recommendation of the President, any area not included in the Wilderness Study by an Act of Congress shall then be administered in accordance with the other applicable provisions of this Act.

SEC. 312(b). The Secretary shall ~~review~~ then conduct a detailed Wilderness Study of those roadless areas of 5,000 contiguous acres or more and roadless islands of the public lands administered by him through the Bureau, which have been included in a Wilderness Study by an Act of Congress and shall report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness. The ~~review~~ Wilderness Study conducted by the Secretary shall be made according to the procedure specified in sections 3(c) and 3(d) and section 4(d)(2) (with respect to mineral surveys) of the Wilderness Act. The recommendations of the Secretary based on the ~~review~~ Wilderness Study conducted by him under this section shall be submitted to the President from time to time. The Study of each such area or island of the public lands by the Secretary shall be completed no later than five years from the date of the Act of Congress including such area in the Study. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to the designation as wilderness of each such area on which ~~review~~ Study has been complete, together with a map thereof and a definition of its boundaries. Such advice by the President shall be given with respect to all of the areas included in the Wilderness Study with respect to not less than one-half of all the areas within five years after the date of enactment of this Act; and the remaining areas within ten years after the date of enactment of this Act. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. At the expiration of three years from the submission to Congress of the recommendation of the President, any area not designated by Congress for preservation as wilderness shall be deemed unsuitable for preservation as wilderness. During the period of ~~review~~ Study of such areas, the Secretary shall continue to administer such lands according to his existing authority in a manner so as to preserve the wilderness character of each such area, subject only to the continuation of land uses presently authorized by the Wilderness Act. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act shall apply with respect to the administration and use of such designated area, including mineral development, in the same manner as they apply to national forest wilderness areas.

Section 312 requires the Secretary to review all roadless areas of 5,000 contiguous acres or more to determine whether they should be preserved as wilderness. During the entire period of review, the Secretary must administer them so as to preserve their wilderness character. This latter provision will effectively transform vast areas of land into wilderness for a long period of time—before even a preliminary determination has been made that they might be suitable for preservation as wilderness.

This amendment is designed to improve the procedures established for the "Wilderness Study". Under a new provision, the Secretary will be required to conduct a preliminary review of all areas subject to this section to determine whether or not they should be included in a "Wilderness Study". Congress would then determine whether the areas recommended by the Secretary should properly be studied in more detail. This preliminary review procedure will insure that exploration and development will be restricted only in areas under serious consideration for preservation as wilderness in the "Wilderness Study". Once an area subject to this section has been approved for study by Congress, however, the Secretary will then be required to preserve its wilderness character.

This amendment also imposes time limits on the Secretary's "Wilderness Study" and on Congressional action on the recommendations of the President. This is to insure that areas being studied will become available for development if either the Secretary or Congress has not taken action within a reasonable period of time.

Finally, a new provision has been added requiring the Secretary to submit recommendations for authorization of appropriate funds for the "Wilderness Study" along with his recommendations as to appropriate areas for study. This will insure that the Secretary will have sufficient funds to conduct the study.

Mr. MELCHER. Now we have George Alderson and Harry Crandell, representing the Wilderness Society.

STATEMENT OF GEORGE ALDERSON, DIRECTOR OF FEDERAL AFFAIRS, THE WILDERNESS SOCIETY, WASHINGTON, D.C., ACCOMPANIED BY HARRY CRANDELL, DIRECTOR OF WILDERNESS REVIEWS

Mr. ALDERSON. Thank you, Mr. Chairman. I am George Alderson and this is Harry Crandell. We appreciate the chance to testify on the aspects of the bill that we did not cover at the previous hearing on the grazing provisions of these bills.

In support of the basic goal of improving the management of the public domain lands, The Wilderness Society favors eight basic objectives in connection with these bills. Six of these are in all three bills in some manner. The other two are in H.R. 5622, namely a provision to establish a National Resource Lands System, with local units identified by name; and the provision to require an inventory of potential new units of the National Park System, National Wildlife Refuge System, National Forest System and National Wild and Scenic Rivers System.

Incidentally, Mr. Chairman, I will only brief my statement, if it can be included in full.

Mr. MELCHER. Without objection, the entire statement will be made a part of the record at this point. Hearing no objection, it is so ordered. Please proceed.

[The prepared statement of Mr. Alderson follows:]

STATEMENT OF GEORGE ALDERSON, DIRECTOR OF FEDERAL AFFAIRS, THE WILDERNESS SOCIETY

I am George Alderson, Director of Federal Affairs, The Wilderness Society, an organization devoted to the conservation of our Nation's remaining wilderness resources and to proper use of the public lands. Our offices are at 1901 Pennsylvania Avenue, N.W., in Washington, D.C. We testified on March 24 concerning grazing provisions of organic legislation for the national resource lands, and we appreciate the opportunity to testify today on other provisions of these bills.

Three bills are before the subcommittee this morning. One is Subcommittee Print No. 1, derived from the subcommittee's deliberations in the 93rd Congress. The second is the Administration bill, H.R. 5224. The third is the Seiberling bill, H.R. 5622.

In support of the basic goal of improving the management of the public domain lands, The Wilderness Society favors eight basic objectives in connection with these bills:

1. To provide a statutory mandate for retention of the public domain lands and for their management under principles of multiple-use and sustained-yield.
2. To establish a National Resource Lands System, with local units identified by name.
3. To provide authority, including enforcement powers, to carry out these stated objectives.
4. To authorize acquisition and exchange of lands.
5. To repeal obsolete land disposal laws.
6. To establish a single policy and procedure for sale of certain lands.

7. To require an inventory of all renewable and non-renewable resources, including wilderness, on the public domain.

8. To require an inventory of potential new units of the National Park System, National Wildlife Refuge System, National Forest System and National Wild and Scenic Rivers System.

As our testimony on March 24 indicated, The Wilderness Society is steadfast in its support for these concepts. We reaffirm our support for organic legislation for the national resource lands. However, we strongly urge that the legislation be deferred until BLM ceases its aggression against the responsibilities of other federal land management agencies, and until BLM is reorganized to separate into different agencies the energy exploitation functions and the land management functions.

The Subcommittee on Public Lands will soon be taking up legislation to establish new national wildlife refuges and national forests in Alaska. This will certainly involve questions of BLM as well as other agencies, and it will involve conflicts between energy exploitation and conservation objectives for these National Interest Lands. We believe it would contribute to your perspective on this Organic Act to take up the Alaska proposals first. Just as the Alaska issues opened our eyes to BLM's built-in conflicts, you would gain insights that would contribute toward the reconsideration of this legislation. A bill can certainly be devised that will accomplish the objectives we all share, without putting the public domain lands squarely in the pocket of the energy industries. We too will continue our consideration of this matter and seek an equitable solution.

ALTERNATIVE BILLS

Of the three bills before the Subcommittee, The Wilderness Society favors H.R. 5622, although it alone will not ameliorate many of BLM's present abuses nor overcome present biases. However, it is clearly the preferable bill.

Since the Subcommittee has begun its hearings on the basis of Subcommittee Print No. 1, we will address our detailed comments to Print No. 1.

WILDERNESS REVIEW

We commend the Subcommittee for its careful consideration of a BLM wilderness review provision in the 93rd Congress.

The Wilderness Society recommends that the language of Sec. 312 of Print No. 1 be strengthened to provide more adequate interim protection for the wilderness study areas during the studies mandated by the bill. We favor the language in H.R. 5622, which provides protection against new intrusions, without interfering with present uses so long as these uses do not impair the suitability of the area for designation as wilderness. For example, mineral entry would continue under this language. Grazing would, of course, continue. The objective here is to give the study areas protection comparable to that provided by the Wilderness Act of 1964 for the primitive areas of the national forests, which were, in effect, wilderness study areas. The key language is as follows:

"During the period of review of such areas, the Secretary shall continue to administer such lands according to his existing authority in a manner as to preserve the wilderness character of each such area. The conduct of the review under this section shall not, of itself, prohibit existing uses to continue in such areas during the period of review so long as such uses do not substantially impair the suitability of such area for preservation as wilderness. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act shall apply with respect to the administration and use of such designated area."

We also recommend provisions to immediately designate as wilderness the 75 areas already identified by BLM in an inventory of "Roadless Areas on the Public Domain 5,000 Acres in Size or Larger." These areas, located in nine states, total 2,600,587 acres.

Of these 75 areas, only seven have yet been designated by BLM as "primitive areas," an administrative category which lacks the statutory direction that is conveyed in a wilderness designation. These seven areas, located in Arizona, Colorado, Montana and Utah, total 187,094 acres. They are strictly analogous to the 54 areas that were placed in the National Wilderness Preservation System by the Wilderness Act in 1964. These 54 were all in the national forests and had been administratively designated as "wilderness," "wild," or "canoe" areas prior to enactment of the Wilderness Act.

We suggest the following language to place the BLM primitive and roadless areas in the Wilderness System:

Sec. —. Wilderness Areas

(a) In furtherance of the purposes of the Wilderness Act (78 Stat. 890), all areas of the national resource lands classified on the effective date of this Act by the Secretary of the Interior as "primitive areas" or identified as "roadless areas" are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System.

(b) As soon as practicable after this Act takes effect, a map and a legal description of each wilderness area shall be filed with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided, however*, that correction of clerical and typographical errors in such legal description and map may be made.

(c) Wilderness areas designated by this Act shall be administered in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

Addition of this provision would be an excellent step toward permanent protection of some of the wilderness resources on the public domain.

The Administration bill, H.R. 5224, contains a grossly deficient wilderness review provision, which represents a major regression from the language adopted by this Subcommittee last year. First, it lacks any deadline for completion of the wilderness reviews. This could leave land-management decisions up in the air for years. We prefer the 10-year deadline in Print No. 1 and in H.R. 5622. In fact, our recollection is that the 10-year deadline was inserted by this Subcommittee last year at the suggestion of BLM, in preference to the 15-year deadline enacted by the Senate.

The Administration bill also suggests a completely new acreage criterion for the wilderness study areas, abandoning that appearing in the Wilderness Act and adopted by this Subcommittee last year. Instead of "roadless areas of 5,000 contiguous acres or more," H.R. 5224 would cover only those areas of "50,000 contiguous, roadless acres or more." This would eliminate three-fourths of the roadless areas currently identified by BLM. Only 16 of the 75 areas listed would qualify for study under the Administration bill. We favor the acreage criterion adopted previously by the Subcommittee.

SPECIAL AREAS INVENTORY

We recommend the adoption of a section to provide for identification of public-domain areas that would be best suited to management as units of the National Park System, National Wildlife Refuge System, National Forest System, or National Wild and Scenic Rivers System. We favor the following language, as in H.R. 5622:

Sec. — (a) Before the close of the 5-year period following the effective date of this Act, the Secretary shall review all lands and waters under his jurisdiction on the effective date of the Act (including lands previously classified or withdrawn, but excluding lands in the National Park System, National Wildlife Refuge System, and lands recommended for inclusion in those Systems and in the National Forest System pursuant to section 17(d)(2) of the Alaska Native Claims Settlement Act) and withdraw from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, those lands and waters which he deems suitable for addition to, or classification as, units of the National Park System, National Forest System, National Wildlife Refuge System, and Wild and Scenic Rivers System.

(b) The Secretary shall submit recommendations to the President with respect to those lands withdrawn by the Secretary pursuant to subsection (a). The President shall promptly advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to the additions proposed by the Secretary. The Secretary shall, in conducting the review required by this subsection, hold public hearings in accordance with the procedures set forth in section 3(d) of the Wilderness Act (78 Stat. 890).

NATIONAL RESOURCE LANDS SYSTEM

We urge that the bill establish a National Resource Lands System, with identified and named local units, analogous to national forests. This would give the lands more identity in the public mind, and thereby create long-term public support for good management programs. It would also provide the agency with the means to request and defend budgets and personnel on a more planned and systematic basis. Language to accomplish this appears in H.R. 5622.

FURTHER COMMENTS ON PRINT NO. 1

1. *Definitions.*—The definition of "withdrawal" wrongly states that a withdrawal involves an exclusion of land from multiple-use management. In fact, most withdrawals only exclude one type of use, allowing the other multiple uses as on other adjacent lands. We suggest deletion of all references to multiple use from the definition.

While the definition of "multiple use" includes non-renewable resources, and we do not object to this, we caution the Subcommittee that this does not necessarily make mineral or fossil-fuel exploitation an integral part of the multiple use concept. Under true multiple use, each of the uses has an equal priority, and management decisions are made so as to foster compatibility among the uses. This is obviously not the case with minerals, because the 1872 Mining Law gives mining top priority over any other use of public lands.

2. *Classification.*—We recommend that the review procedure for classification of lands pursuant to land use plans, under Sec. 202(e) be limited to public involvement, without the necessity of Congressional review or Acts of Congress on large tracts. It is always the prerogative of the Congress to dictate how the land will be managed through specific Acts of Congress. But most land classification decisions can be made by BLM in accordance with the general authorities elsewhere in Print No. 1, just as the Forest Service has done for decades under the 1897 Organic Act and the 1960 Multiple Use Act. In most cases, there is little controversy. If there is objection, the aggrieved parties are likely to seek help from their Congressman, who has both the power to influence the agency decision through direct intervention and to propose legislative remedies, if necessary. We believe that the review requirements of Print No. 1 would vastly slow the progress of effective land management.

We recommend the deletion of Sec. 202(e). Instead, adequate public involvement can be insured by adoption of language in Sec. 104 of H.R. 5622, which provides for notice in the Federal Register and public hearings on changes of classification for any tract over 1,280 acres.

3. *Public Participation.*—We believe that provision should be made for thorough public involvement in the decision-making for the public lands. This is another way of reducing conflicts in the land-use pattern. Section 203 addresses this subject, but it appears to limit the required public role to "the formulation of standards and criteria." The real need for involvement is not in the often hazy realm of standards and criteria, but in the specifics of a proposed land-use plan. It is at the actual planning stage that local public expertise is most effective, in our experience. The people know these lands, they use them in various ways, and they can bring on-the-ground knowledge to bear on BLM's land-use plans. We suggest adding language along the lines of that in Sec. 5 of H.R. 5622.

4. *Sales Criteria.*—Land sale is an area in which tight controls should be placed on the Secretary's authority, because this bill establishes a basic policy of not disposing of public lands. We suggest that item 8 under Sec. 203(a), on page 14, be narrowed to remove the broad discretion given the Secretary. We propose the adoption of language in Sec. 202(a)(3) of H.R. 5622, confining this criterion to sales for expansion of existing communities.

Instead of the Congressional review procedure in Sec. 203(b), we recommend that a Federal Register notice and a public hearing be required for any sale of public lands.

Another defect in Sec. 203 is that only land already designated as wilderness is exempt from sale. We suggest that the exemption be extended to cover "areas subject to review pursuant to Sec. 312 of this Act, and land within areas of critical environmental concern."

5. *Withdrawals.*—Sec. 204 of Print No. 1 establishes conditions and procedures that would delay and cripple good land management. We believe that the basic multiple-use instructions contained in this legislation are sufficient, without re-

quiring Congressional review in advance of each withdrawal. The Congress always has the last word, because a withdrawal can be rescinded by Congress, and Congressional pressure can also force the Secretary to modify or rescind a withdrawal. At present, the Secretary is very attentive to the desires of the Congressional delegation from a state in which he is considering a withdrawal.

In our view, the Secretary must have withdrawal authority in order to carry out multiple-use mandate in this bill. Withdrawal is often the only way to prevent one of the uses from destroying all the other values of the land. It is therefore an important and essential tool in implementing the multiple-use concept.

The emergency withdrawal authority in Sec. 204(b)(1) is of almost no value because the list of conditions (A through K) imposes a factual burden on the Secretary that would be all but insurmountable in an emergency situation.

We recommend the deletion of the entire Sec. 204.

6. *Land Acquisition*.—We recommend deletion of the limitation on BLM's use of eminent domain, in Sec. 205. Although BLM is only beginning to take the broad interest in protection of public values that we see in the other agencies, we anticipate that acquisition of missing tracts will be needed to complete important public-use areas. Condemnation authority will be needed in this regard. Although it would be seldom exercised, eminent domain authority should be available, without the limitation to cases of access, as is provided in the draft. We also recommend deletion of references to the Forest Service and Secretary of Agriculture from Sec. 205.

7. *Exchanges*.—We recommend deletion of the Forest Service from Sec. 206 (a). The Forest Service already has adequate exchange authority.

8. *Recordation*.—We strongly favor a recordation requirement. However, we urge adoption of the language in Sec. 105 of H.R. 5622 in lieu of that in Print No. 1.

9. *Grazing Advisory Boards*.—We recommend deletion of Sec. 212, which would reverse the recent constructive change by the Interior Department to provide balanced representation of diverse citizens' concerns on grazing district advisory boards. The conversion of these boards to reflect a multiple-use spectrum is an excellent change, which is consonant with overall federal policy under the Federal Advisory Committee Act.

10. *Law Enforcement*.—We generally favor the approach of Print No. 1 and H.R. 5622 on law enforcement instead of the broader authority of the Administration bill. The Subcommittee did a commendable job of perfecting these provisions last year.

However, we suggest the addition of language to Sec. 303, to insure that BLM will not reimburse the states for enforcement of fish and game laws, which are already a state responsibility. The language might be as follows: "Provided, however, that expenditures in connection with enforcement of state laws relating to the taking of fish and wildlife shall not be reimbursed under this section."

11. *Local Advisory Councils*.—This provision in Sec. 309, is misnamed. It goes far beyond the local advisory councils under the Taylor Grazing Act. Instead, it authorizes a hierarchy of advisory councils at four levels in BLM—regional, state, district, and locality unit. This provision, which drew much opposition when it was part of H.R. 7211 in the 92nd Congress, is one of the most objectionable in the whole bill. We recommend that it be changed to the general authority provided under Sec. 6 of H.R. 5622.

12. *California Desert*.—We favor establishment of the California Desert Conservation Area, and recommend adoption of the stronger language found in Sec. 309 of H.R. 5622, which is based on the Pettis bill.

13. *Recreation Conveyances*.—We recommend that the restrictions in Sec. 402 be tightened, to restrict local governments to 640 acres per year in free grants of public land for recreational purposes. However, we commend the Subcommittee for its labors last year to prevent the carte-blanche giveaways that were contemplated in earlier drafts. The restriction on year-to-year carryovers is an excellent provision, and we urge that it be further restricted to prohibit any carryover at the end of a given year. The principal purpose of carryovers is to allow a state to amass a large tract. Few states are prepared to give proper management to tracts larger than 6,400 acres. If a state seeks a larger area, we suggest than an Act of Congress be required. After all, these are lands that belong to all the people, not just those of the state in which they are located.

14. *Rights-of-Way*.—We recommend that all references to the National Forest

System and Secretary of Agriculture be deleted from Title V, which concerns rights-of-way. There is adequate authority available in present laws for national forest rights-of-way.

We generally favor the rights-of-way provisions in Title IV of H.R. 5622, which provide more effective control of environmental impacts than the language in Print No. 1. However, we commend the Subcommittee for its diligence in perfecting Print No. 1 in this respect. It is much superior to the bill passed by the Senate last year.

We recommend that the opening paragraph of Sec. 501 be amended to exempt areas subject to study under the wilderness review provision, and lands within areas of critical environmental concern.

15. *Repealers.*—We strongly favor repeal of the many obsolete land laws, as proposed in Title VI. But we recommend deletion of all language which postpones the effective date of the repealers. If it's time to repeal these laws, as we firmly believe, then let's do it now and not leave the barn door open.

We also recommend that provisions be added amending the Taylor Grazing Act (1) to eliminate the preference given to grazing, (2) to eliminate any reference to "pending its final disposal, and (3) to require that permittees allow public access easements through their lands.

16. *Repeal of Withdrawal Authority.*—We recommend that present withdrawal authority be retained, as explained under item 5 above.

We therefore urge deletion of Sec. 604(b), which would repeal all withdrawal authority.

17. *Authorization.*—Putting BLM through the exercise prescribed in Sec. 606 would have the most likely result of cutting back on the funds for land management, because this procedure exposes BLM's authorization repeatedly to the often hostile Office of Management and Budget. We believe it is to the advantage of BLM programs to avoid another pass through OMB.

Mr. Chairman, if we can assist the Subcommittee in any way as you consider this legislation, we will be glad to do so. We appreciate, as always, the opportunity to present our views, and we look forward to cooperating with your efforts in the weeks ahead.

LIST OF DESIGNATED PRIMITIVE AREAS

1. Aravaipa Canyon—Arizona—5580 acres. Designated May 6, 1971.

Description.—Relatively inaccessible canyon area of diverse topographic and climatic features. Stream that flows through the canyon sustains two endangered species of fish and supports a significant density of riparian vegetation. Terrain is mountainous with canyon wall—drops over 1000' in some places.

2. Paria Canyon—South Utah and North Arizona—27,515 acres. Designated May 6, 1971.

Description.—Canyon of immense geological and archeological value. Gouges 2800' deep into the Paria Plateau. Six miles of the 15 mile canyon is extremely narrow—some places 10' in width.

3. Dark Canyon—Utah 74,317 acres. Designated September 18, 1970.

Description.—Series of colorful canyons and high mesas on the eastern side of the Colorado River from Gypsum Canyon south to Dark Canyon.

4. Grand Gulch—Utah—29,480. Designated September 27, 1970.

Description.—Colorful canyons and high mesas characteristic of this area. Relatively inaccessible, abounding in significant geological and archeological formations.

5. Humbug Spires—Montana—7,041 acres. Designated September 13, 1972.

Description.—Hard rock spires jutting out of timbered ridges. Nine spires are from 300' to 600' in height. Over 50 others of varied heights in the immediate vicinity.

6. Peartrap Canyon—Montana—2,761 acres. Designated September 13, 1972.

Description.—A rough terrained area enclosing the fast flowing Madison River. Excellent fishing in coniferous vegetated environment.

Of the 180,000,000 acres of the national resource lands outside of Alaska, approximately 2,600,000 acres have been identified as "roadless."

7. Powderhorn—Colorado—40,400 acres. Designated September 29, 1973.

Description.—Elevations range from 12,600 to about 8,600 feet. Five bioclimatic zones from sagebrush to alpine. Wildlife, tundra, few market trails. Three major lakes.

ROADLESS AREAS ON THE PUBLIC DOMAIN 5,000 ACRES IN SIZE OR LARGER

State	Name	Acres
Arizona	Black Mountains	75,000
	Bill Williams Mountain	24,000
	Rawhide	15,000
	Arrastra Mountain	70,000
	Burro Creek	7,000
	Eagle Tail Mountains	33,000
	Table Top Mountains	32,000
	Gila Mountains	65,000
	Gila Box	15,000
	Peloncillo Mountains	50,000
	Des Cabezas Mountains	20,000
	Gila River and Mescal Mountains	10,000
	Sullivan Canyon Area	38,000
	Kanab Creek	33,000
	Subtotal	487,000
California	Algodones	20,000
	New York Mountains	25,000
	Providence Mountains	17,000
	Granite Mountains	36,000
	Kingston Range	40,000
	Cima Dome	32,000
	Whipple Mountains	60,000
	Turtle Mountains	60,000
	Chuckwalla Mountains	70,000
	Yuha Desert	13,000
	Picacho Area	38,000
	Whitewater River Area	42,000
	Earle Lake Points	3,280
	Skedaddle Mountain	22,080
	Gooch-Rock Springs	64,120
	Twin Peaks	40,600
	Five Springs	11,000
	Indian Mountain	1,360
	Tunnison Mountain	6,760
	Elder Creek	3,695
	Cache Creek	36,180
	Timber Craters	15,000
	Beegum Gorge	2,400
	Keynot Peak	85,000
	Amargosa Desert	339,000
	Owens Peak Area	30,000
	Saline Wild Area	50,000
	Owlshead Mountains	50,000
	Big Baldy	2,000
	Inyo Mountains	20,000
	Last Chance Range	25,000
	Subtotal	1,260,535
Colorado	Powderhorn	40,000
	North Sand Hills	670
	Red Cloud Peak	30,000
	Beaver Creek	15,500
	Browns Canyons	12,500
	Black Ridge	65,000
	North Thompson	4,366
	Lookout Mountain Breaks	6,000
	Weber-Menefoe	23,000
	Delores River	30,000
	Sewemup Mesa	16,000
	Cold Springs Mountain Breaks	22,500
	Red Bluffs	1,500
	Grape Creek	22,500
	Palisade	25,600
	Diamond Mountain Breaks	12,600
	Subtotal	327,736
Idaho	Craters of the Moon	(¹)
	Lava Field	230,000
	Wapi Lava Field	90,000
	Subtotal	320,000
Montana	Humbus Spires	7,000
	Bear Trap Canyon	3,200
	Subtotal	10,200
Nevada	Blue Lake	8,800
	Subtotal	8,800
New Mexico	Grants Malpais	88,000
	Subtotal	88,000

See footnote at end of table, p. 402.

ROADLESS AREAS ON THE PUBLIC DOMAIN 5,000 ACRES IN SIZE OR LARGER—Continued

State	Name	Acres
Utah	Grant Gulch	29,480
	Paria Canyon	8,725
	Joshua Tree	1,040
	Devils Garden	640
	The Gulch	3,430
	Canaan Mountain	35,000
Wyoming	Subtotal	78,316
	Ferris Mountain	20,000
	Subtotal	20,000
	Grand total	2,600,587

¹ Unknown.

Source: Bureau of Land Management.

WILDERNESS ACT OF 1964—SECTIONS 3(c) AND 3(d)

Report to President. (c) Within ten years after the effective date of this Act the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within, the national wildlife refuges and game ranges, under his jurisdiction on the effective date of this Act and shall report to the President his recommendation as to the suitability or non-suitability of each such area or island for preservation as wilderness.

Presidential recommendation to Congress. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after enactment of this Act, not less than two-thirds within seven years of enactment of this Act, and the remainder within ten years of enactment of this Act.

Congressional approval. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

Suitability. (d) (1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness—

Publication in Federal Register. (A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land:

Hearings. (B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: *Provided*, That, if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies:

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

Mr. ALDERSON. The Subcommittee on Public Lands will soon be taking up legislation to establish new national wildlife refuges and national forests in Alaska. This will certainly involve questions of BLM as well as other agencies, and it will involve conflicts between energy exploitation and conservation objectives for these national interest lands.

We believe it would contribute to your perspective on this Organic Act to take up the Alaska proposals first. Just as the Alaska issues opened our eyes to BLM's built-in conflicts, you would gain insights that would contribute toward the reconsideration of this legislation.

A bill can certainly be devised that will accomplish the objectives we all share, without putting the public domain lands squarely in the pocket of the energy industries.

Of the three bills before the subcommittee, the Wilderness Society favors H.R. 5622, although it alone will not ameliorate many of BLM's present abuses nor overcome present biases. However, it is clearly the preferable bill.

Since the subcommittee has begun its hearings on the basis of Subcommittee Print No. 1, we will address our detailed comments to that print, referring, as necessary, to the other two bills.

Concerning the wilderness review provision, we commend the subcommittee for its careful consideration of a BLM wilderness review provision in the 93d Congress.

The Wilderness Society recommends that the language of section 312 of Print No. 1 be strengthened to provide more adequate interim protection for the wilderness study areas during the studies mandated by the bill.

We all understood, and do not challenge, that the language in Print No. 1 was intended to allow mineral entry to continue the same as it continues on national forest wilderness primitive areas in the West, under the Wilderness Act. So that is not at issue—I wanted to bring that up because of the testimony of the previous witness.

We favor the language in H.R. 5622, which provides protection against new intrusions in the wilderness study areas, without interfering with present uses, so long as these uses do not impair the suitability of the area for designation as wilderness.

For example, mineral entry would continue under this language. Grazing would, of course, continue. The objective here is to give the study areas protection comparable to that provided by the Wilderness Act of 1964 for the primitive areas of the national forests.

The administration bill, H.R. 5224, contains a grossly deficient wilderness review provision, which represents a major regression from the language adopted by this subcommittee last year.

First, it lacks any deadline for completion of the wilderness reviews. This could leave land management decisions up in the air for years, because of failure to get the areas reviewed and bring those recommendations to Congress on a timely basis.

We prefer the 10-year deadline in Print No. 1 and in H.R. 5622. In fact, our recollection is that the 10-year deadline was inserted by this subcommittee last year at the suggestion of the Bureau of Land Management because they felt that the 15-year deadline in the Senate-passed bill was too long.

The administration bill also suggests a completely new acreage criterion for the wilderness study areas, abandoning the criterion that appears in the Wilderness Act and which was adopted by this subcommittee last year.

Instead of "roadless areas of 5,000 contiguous acres or more," H.R. 5224 would cover only those areas of "50,000 contiguous, roadless acres or more."

By making a 10-fold increase in the minimum acreage of the areas to be studied, this would eliminate about three-fourths of the roadless areas currently identified by the Bureau of Land Management. Only 16 out of the 75 areas listed on the Bureau of Land Management's roadless areas list would qualify for study under the administration bill. So we strongly support the acreage criterion adopted by the subcommittee and hope that that could be included in this legislation.

We also have a suggestion concerning the special areas inventory. Actually, that is just a short way of referring to the study to identify public domain lands that would be best suited to management as units of the national park system, national wildlife refuge system, national forest system, or national wild and scenic river system.

We favor the language on this point which was included in H.R. 5622. While we recognize, and it is a basic point of the legislation, that the Bureau of Land Management is the agency to manage land predominantly best suited to multiple-use, sustained-yield management, there are probably lands in the public domain now that would be best suited to management under one of the other systems.

This study would get at that, as part of the inventory process, at the same time the BLM is completing its initial inventory. So a timely decision could be made by Congress on allocation of these lands to other systems, if that appears to be desirable.

We also urge that the bill establish a national resource lands system with identified, named local units which would be analogous to national forests. We feel that this would give the lands more identity in the public mind, and thereby create long-term public support for good management programs.

It would also provide the agency with the means to request and defend budgets and personnel on a more planned and systematic basis. The language to accomplish this appears in H.R. 5622.

Mr. Chairman, I do not see any need to cover orally the further comments on Print No. 1. These cover points that were much discussed during the 93d Congress and we reaffirm them here in our statement, with specific reference to the three bills before you.

But that will complete our comments at this point. We will always be glad to assist the subcommittee in any way we can as you proceed to consider this legislation.

Mr. MELCHER. Thank you.

Now I have a few questions. First, I am glad you listed these, one, two, three, four, being specific about what is in Subcommittee Print No. 1.

Now when we talk about classification, you do not really object to the Congress getting into the act, by reviewing classifications, do you? You seem to say that it is good for the public to review them but would not want to go so far as to say that Congress should not review classifications.

Mr. ALDERSON. We do not feel that that should be a requirement in the bill. We feel that it would be best to omit that required procedure.

Mr. MELCHER. You do object to Congressional review?

Mr. ALDERSON. We recognize that the Congress is involved in these wherever a controversy comes up, and the local Congressman is always involved in those cases.

Mr. MELCHER. What we have done is set a framework for Congress to do its job, overview of the Federal agency or a couple of Federal agencies. And I think that we ought to have a great deal more of that. That is one of the failures of Congress, not to really look at these agencies and what they do.

Mr. ALDERSON. I guess we just disagree on the need for a formal, required procedure.

Mr. MELCHER. Well, I am going to state that I think this particular review section has a great deal of appeal in this committee, in the full committee, in the House and in the Senate.

Senator Metcalf called me up one day last year and said, "I do not think your bill on BLM will be any good." I said, "tell me why?" and he said, one thing, why should we have restrictions on withdrawals and so forth?

I said, "well, that is a question of congressional review," and I went through it a little bit and he said, "Oh. I think that." So this is the type of thing for which Members of Congress who have been here much longer than I. see the need. I think that that will become one of the provisions in the bill.

Now, public participation, I read your statement to mean that as long as there is public involvement before the hearing procedure, before these decisions are made, that somehow they are going to come out all right.

Now I went through the escapade last year of the Bureau of Sport Fisheries and Wildlife setting up a bunch of hearings on what to do about the C. M. Russell Game Range. They picked cities in which to hold the hearings: Billings, Denver, Malta, and maybe one other place. Two of them were in Montana, and how Denver got in there I do not know.

But we suggested they might hold some hearings closer to where the people are that live nearby, or have something to do with the Range. We went all through that. I think it took hours of public testimony.

The Secretary decided that he did not want those people managing the Range, so now it is under the management of the Bureau of Land Management.

At this period, right now, they are holding another series of public meetings. Now were you satisfied with the outcome of the public meetings? The public meeting process in the first instance?

Mr. CRANDELL. We were, after you got involved.

Mr. MELCHER. Pardon me?

Mr. CRANDELL. We were, after you got involved.

Mr. MELCHER. You were satisfied with the outcome of the hearing?

Mr. CRANDELL. After you suggested that they hold them in Jordan and Lewiston.

Mr. MELCHER. Yes. That was a set of hearings which were held for input of the public. Then the decision was made to transfer from joint

administration with the Bureau of Sport Fisheries and Wildlife, to sole administration by BLM. They decided to do that. You objected to that?

Mr. CRANDELL. Very strongly.

Mr. MELCHER. And now we are going to have a new series of public hearings for people who are going to testify. I think they agreed to hold one of those hearings in Miles City. BLM was negligent, too, in not holding the hearings close to where the people that were involved lived.

But, nevertheless, they are going to hold another set of hearings, and they are going to assemble all of that public testimony. I am sure you will have some input, or members of your organization will, which is fine.

But, just how does this public hearing procedure relate to what you want done with public land management?

Mr. CRANDELL. Do you mean the process, Mr. Chairman?

Mr. MELCHER. You recognize they have public hearings and they take public testimony, but the Administrator can do as he pleases, anyway. Do you have all that confidence in the administrator of public lands, even after he holds his public hearings, making the decision that you advised?

Mr. CRANDELL. Well, since you used a current example which we are very interested in, we have a new position of The Wilderness Society to present. I can categorically state that we will support the subcommittee in its efforts to withdraw this kind of unilateral authority of the Secretary of the Interior and to have congressional overview of actions such as this.

Mr. MELCHER. You will support that in the bill?

Mr. CRANDELL. You bet.

Mr. MELCHER. I am glad to hear that. That does clear up some points and put us, I think, more in line with what the realities are here in Congress in wanting that overview.

Mr. MELCHER. I yield to the gentleman from California.

Mr. CLAUSEN. On that point, Mr. Chairman, I am not sure if I understand in specific terms what your objections were to the public hearings and procedures? I did not hear a response.

Mr. CRANDELL. Mr. Clausen, the hearings that Mr. Melcher mentioned, last year, were required by the Wilderness Act. The field hearings were required by the Wilderness Act on the wilderness proposal of the Fish and Wildlife Service.

The subject was whether or not certain areas of the Charles M. Russell National Wildlife Range should be recommended by the Secretary as wilderness.

The President of the United States recommended a wilderness proposal, based on those hearings, subject to certain mineral surveys. Later, the Secretary, through his present authority, decided to transfer the administration of the Wildlife Range to the Bureau of Land Management.

Now, at the present time, they are holding public meetings on that decision. What has us upset is that the first series of hearings did not discuss the transfer of administration. The second set of meetings is being held to discuss the transfer decision, but they are not permitting discussion of the merits of the decision, so we feel that

the people are not really having an opportunity to state their views on whether they are for or against the thing, in this instance.

Mr. CLAUSEN. I am taking a page from the book of the Chairman. You brought that point of view to our attention now, and that is probably the strongest position in support of the congressional over-view I have heard, because none of us would have known the problems of the hearing procedures.

Unless you were up here before a congressional committee, I would not have heard—I just make that observation and put this whole thing in perspective.

Mr. CRANDELL. I do not want to embarrass George at all. George is merely presenting a longstanding policy of The Wilderness Society. Our executive committee is meeting tomorrow and I feel that we will have a good discussion on it. I think you are going to see a change, mainly as a result of this wildlife range controversy.

Mr. ALDERSON. Mr. Chairman, I think I should point out that I researched the question you asked at the last hearing on this subject. According to the definition of withdrawal that is in print No. 1, or in any of these other bills, I cannot see how the review mechanism would apply to the decision involving the Charles M. Russell Wildlife Range.

So, if that is the kind of decision you are trying to cover, something is going to have to be modified to make sure that it covers it.

Mr. CLAUSEN. Mr. Chairman, I might pursue that because it is along the line of questioning.

As a matter of application, you state in the final sentence of paragraph two, relating to classification: "We believe that the review requirements of Subcommittee Print No. 1 would vastly slow the progress of effective land management."

Can you clarify that? How would it slow the progress?

Mr. ALDERSON. That is the position that has been changed, but the explanation of that is that we felt that the process of going through this additional review would result in additional consumption of time on many of these decisions that could have been handled by the agency. However, that is the explanation of our former policy.

Mr. CLAUSEN. If this was a change in your policy then we will not pursue the question.

Mr. SHAFER. I did want to clarify something in my own mind to see that I am tracking with George and Harry here on this. We are talking about two things, essentially, on the Charles, M. Russell and also on the Shelton. We do have a withdrawal plan in our bill, the Subcommittee Print No. 1, which would place certain restrictions on future withdrawals.

But, as far as transfers from the Bureau of Land Management to the Fish and Wildlife, or from Fish and Wildlife to Bureau of Land Management, the bill as it is presently written would not in any way restrict that.

Are you in agreement with that statement?

Mr. CRANDELL. No, for this reason. The Secretary pulled a little sneaky maneuver over here. He merely has changed the administering agency under the withdrawal authorities under which he withdrew the Charles M. Russell Range to begin with, and the Bureau of Land Management will continue to administer it as a unit of the

National Wildlife Refuge System. I am no lawyer, but I think what he is using is the present withdrawal authority to merely change the administrative agencies.

Mr. SHAFER. I guess I had looked at it differently than you, Harry. I look at it as two completely separate actions. One is a withdrawal that may have already segregated this land by noting it on the tract books. In this case it is a withdrawal from mineral entry. That is one act.

Then, his transfer of jurisdiction of the refuges from Fish and Wildlife to BLM looks like to me a completely separate action and is not related. Now, whether or not he is using withdrawal authority as a subterfuge, I do not know. I might disagree with you on that, but the Secretary is making a transfer under the Reorganization Plan No. 3 of 1950 and the withdrawal authority has nothing to do with that.

Perhaps we should discuss this afterwards.

Mr. CRANDELL. OK, I would like to do that.

Mr. MELCHER. Now I have two questions. The grazing advisory boards are very significant things in the West. And we are well aware of people that are involved in communities where there are sizable acreages of public lands available for grazing, who very much want to retain local advisory boards. And we see no reason not to retain them.

I note that you recommend we delete them. But do you not see the need for a local advisory board dealing with grazing problems particularly in relation to using half of the grazing fees for the purpose of range improvements and rehabilitation?

Mr. ALDERSON. Our recommendation was that that would be handled by the local advisory board on a multiple use basis, as opposed to the single use, grazing-only boards.

Mr. MELCHER. Well, we will go on with that. I think that that is something we will go on with, but even with the grazing advisory boards called for by statute, which I understand is no longer in effect, was not one member at least, designated for wildlife?

Mr. SHAFER. Yes.

Mr. MELCHER. All right, at least one was designated and had represented wildlife interests and then the others were elected? Is that right?

Mr. SHAFER. Yes.

Mr. MELCHER. Now, even with those boards, it was not entirely grazing. We have, through the course of the last 2 years, run into this point often. And we can consider restructuring the board to represent more than just grazing and wildlife interests—for instance, local government is involved in there, too.

Do you not really believe that it is absolutely essential to have such a board at the local level, to deal with range improvements? And, that is primarily grazing and wildlife but recreation comes in there too.

Mr. ALDERSON. We think that, because the range improvements are going to have a substantial effect on the other uses, it is good to have a balanced spectrum of representation of the different citizen concerns on the board, as opposed to having only one wildlife representative.

We suggest that you let the present multiple use advisory board structure, that was implemented at the beginning of this year, stay in effect and see how it works, because if the grazing permittees want to get together with the local BLM personnel, they can always do so.

We think it is advisable and helpful to BLM to have advice on these points from a broad spectrum of the citizens' concerns.

Mr. MELCHER. The Forest Service, of course, uses both multiple use advisory boards and local grazing advisory board. If it would be patterned after that, do you see any objections?

Mr. ALDERSON. I do not have any comment on that, off hand.

Mr. MELCHER. I am just drawing it to your attention. It is very pertinent. In fact, if we are truly going to have significant funds for range improvements, I think the closer we tie the decisionmaking on range improvements to the local area, the better off we are. Because it makes a lot of difference—what we might do in city areas compared to what you might do in some portion of New Mexico—as to range improvements. I think we can arrive at a vast improvement of the condition of the public lands.

One other point, rights-of-way. Now you recommend that we do not do anything with respect to the Forest Service, but we are persuaded otherwise as we were last year. You have not changed my view that the Forest Service needs some improvement, too, on rights-of-way. One of the things we have to consider is transportation corridors in the Alaskan Pipeline Act. Interior was directed to come up with a study within a year's time of the need for transportation corridors so that we could see what would make sense in granting rights-of-way across public lands.

We already have got Interior in the business of approving and writing out the permits for rights-of-way for oil and gas pipelines across national forest lands. I think we might as well recognize that there are common problems among the various agencies that administer public lands. And if we can come up with decent guidance for rights-of-way, modern concepts. I do not see any reason why that should not be applied to national forest lands.

I read in your statement here that your board is meeting tomorrow. I strongly urge you to bring that point up and see whether your board would take what I would consider a more enlightened view on rights-of-way than is given in this testimony today.

What have I missed? If we write good legislation on BLM rights-of-way, why should we not modernize rights-of-way in the national forests?

Mr. ALDERSON. Well, if the legislation would strengthen the criteria on the Forest Service rights-of-way, it might be valuable. We will be open to consider that concept.

Mr. MELCHER. I think it would very definitely strengthen the criteria. The Forest Service told us this year that they did not object to the sections on rights-of-way.

We have asked them for a list of their statutes that deal with the rights-of-way and they have supplied them. We are reviewing them and they are reviewing them, too. We think our legislation is going

to be quite a forward step in granting rights-of-way over national forest lands.

Mr. MELCHER. Does anyone have any questions? Mr. Rock?

Mr. ROCK. On page 8, George, you make a strong plea for public involvement in decisionmaking for public lands. Would you reconcile this your recommendation on page 4 to immediately designate all 75 BLM areas as wilderness?

I do not understand. I think many, or most, of these have never had a public hearing on them.

Mr. ALDERSON. The seven primitive areas have had public involvement. I submitted a list of the involvement in those last year. It is in last year's hearing record. The others have not. We certainly concede that point.

Mr. MELCHER. We are right back to where we were last year on that. As a matter of fact, there were public hearings in Montana, I do not want to knock that—there were some public hearings but they were not as extensive as we have held in other areas.

Mr. CRANDELL. Mr. Chairman, I have just a couple of points I would like to have the committee consider, in relation to Alaska. Our organization is deeply concerned and involved in Alaskan matters, and have been for the last several years.

The aftermath of the disposition of lands in Alaska is going to be around 100 million acres to which this law would apply which would be natural resource lands.

Section 17(d)(1) of the Alaska Native Claims Settlement Act directed the Secretary to classify these lands "in the public interest" or, in other words, the way we interpret it, for multiple use, resource development, extraction, and so forth.

There are a couple of problems that have come up recently in relation to the so-called 80-million-acre provision of the Alaska Native Claims Settlement Act or Section 17(d)(2) and these have to do with subsistent uses by people, both Natives and others, in Alaska—not only fish and wildlife resources but products of the land.

It is not clear, in the present bill, how subsistent uses will be handled in Alaska on these 100 million acres. And also the Interior Department, at the present time, is pretty deeply involved in identifying and withdrawing easements transferring title to Natives and to the State on a large chunk of this property and other properties in Alaska.

I am not certain, but as I read the rights-of-way provisions, I do not think they cover that. I do not know whether it should, but it is a very current active program in the Department.

Now I hope you do not think I am being facetious now in my next point. In the Seward Peninsula country in Alaska, there is a big chunk of national resource lands that is going to remain under Bureau of Land Management there, after all the dispositions have been made. This is an area where at the present time I believe the Natives have a lease or a permit either from the Bureau of Land Management or from the Bureau of Indian Affairs, or someone, to graze reindeer.

Now, these reindeer are domesticated. They consider them to be livestock. I do not know whether you would want to get into this or not, but I would suggest that these people not be shut out of

their grazing rights on public lands through lack of mention in this bill.

And, also, I am wondering whether the \$2 per animal-unit-month fee might be a little bit restrictive. That has come up recently and I thought we would bring it to your attention.

Mr. MELCHER. Thank you for bringing it to our attention here this morning. We are certainly going to have to take note of that in relationship to this bill.

As long as you brought up Alaska, the bill H.R. 49 reported out of this subcommittee and out of the full committee and reported to the Floor, deals with 22 million acres in Alaska, Naval Petroleum Reserve No. 4. I am not aware that we received any testimony or any statement from your organization, but I do think you ought to bear in mind that under our bill there would only be exploration and no development on that 22 million acres, as far as oil and gas is concerned. Under the administration's bill, they seem to be saying, if I interpret their bill correctly, that they will explore it and lease and develop it.

That seems entirely irresponsible. Certainly when you start leasing on 22 million acres for oil and gas, you set in motion a chain of events that will follow. I do not think that that area of Alaska is ready for development, in the public interest; first of all, because I do not believe that, in the interest of transportation of oil and gas out there for some time maybe 10 years in the future, it makes sense to allow leasing now. Leasing now, I would judge, would only be for the very, very rich major oil companies who would have to sit on their holdings presumably after investing great amounts of capital.

The need to get the lease and then hold it until transportation is available would effectively eliminate independent oil companies.

But, beyond that, we will be considering all the values of the 22 million acres of the reserve. I think that we should, by all means, find out what oil and gas is there and then have Congress evaluate those other values of that 22 million acres before making a decision on what is to happen.

So we are really interested in a big chunk of Alaska and will be following whichever bill is considered and adopted on the House floor. Or if both bills are considered—the administration bill and H.R. 49—we can be careful to maintain that feature in protecting the 22 million acres of the North Slope of Alaska. And, until we have some better judgment on how we manage the whole area, I am asking for support for our bill.

Mr. MELCHER. The gentleman from California.

Mr. CLAUSEN. Yes, Mr. Chairman.

I would like to address some comments to the witnesses with regard to the sales criteria wherein you intend to criticize that which is attained in the bill in setting up specific criteria, just by way of background. I generally agree—and the Members can disagree with me—if they do not approve of this overall assessment in attempting to draft a BLM Organic Act. I think it is generally accepted that for the directors, those of the Department of Interior who had responsibility for managing the policies handed down under the BLM Organic Act in the past were very limited.

They were essentially described as, I think, a disposal agency and now there is a policy exchange where the effort is to permit those who do have the responsibility for managing lands to actually manage them in the best public interests. Yet sometimes the best public interests may very well be to actually dispose of some areas, and I think you acknowledge that some of these areas are critical and, therefore, it would be necessary to settle for an expansion of an existing community.

The same thing may very well be true to firm up an agricultural production unit. I think that we can narrow down the specific criteria and add specific guidelines to the law which would lend itself to a lesser amount of ambiguity and confusion.

With that background, what do you see is wrong with establishing a specific criteria in the bill as it relates to the sales criteria?

Mr. ALDERSON. We do not object to having specific criteria. In fact, we like the first two criteria that are in the sales provision of this bill. The first concerns isolated tracts which are not practicable for management as part of the national resource lands.

The second concerns lands that were acquired by the Government for a specific purpose and are no longer needed for that or any other purpose. But we feel that the third provision in Print No. 4, is too broad. It grants a broad discretion to sell these lands, so we feel that it is better to narrow that to a specific criterion covering the primary objective which has been brought up in hearings on this subject.

The primary objective that I have heard discussed in all of the hearings last year concerned expansion of existing communities, so our suggestion is to use that as a specific criterion. Then if there are other purposes that need to be considered, which are quite rare, they can come to Congress with a specific bill to effect that transfer.

We have the same objective that the chairman and subcommittee members have been getting at in other provisions of this bill, to restrict the discretion of the executive branch, especially in a case like this where sales are basically an exception, a minor exception from the main objective being established by the bill.

Mr. MELCHER. Thank you both very much. We appreciate your advice on the other bill.

Is Tom Garrett with us? Tom Garrett, representing Friends of the Earth. Tom, glad to have you with us this morning.

Mr. GARRETT. Thank you.

Mr. MELCHER. I am glad to note that you have a very brief and concise testimony. Please proceed.

STATEMENT OF TOM GARRETT, CONSERVATION DIRECTOR, FRIENDS OF THE EARTH

Mr. GARRETT. Mr. Chairman, I am Tom Garrett, Friends of the Earth.

We applaud the effort of this subcommittee to develop legislation to insure the proper management of public domain lands. They have put in a lot of work on it. At the same time, we have seen, thus far, no single version of the legislation being considered, including one developed by a group of conservation organizations, that we can presently support.

In order to support a BLM Act, Friends of the Earth must be satisfied that such an act contains a mechanism to minimize overgrazing and misuse of public lands without producing hardship for the tens of thousands of families in the West directly and indirectly dependent on grazing privileges, and to discourage the use of public resource lands for agricultural purposes by corporations, other than family corporations formed for the sole purpose of engaging in agriculture.

We must also be convinced that safeguards exist against politicization and corruption and which guarantee that this agency will never be able to engage in abuses of citizens which have characterized the activities of the Bureau of Reclamation other agencies of the Department of the Interior.

We are particularly opposed to the granting of powers of eminent domain to the BLM, to the BLM management.

The performance of the BLM in administering Outer Continental Shelf leasing, its recent geothermal leasing, and its development of a primary corridor system for Alaska indicate an increasing bias toward energy development and lend credence to the more sinister interpretations of BLM's evidently successful seizure of the three national game refuges and various interest lands in Alaska.

No act is better than its administration. Until we are convinced that the BLM's recent menacing antics are not symptomatic of a takeover by energy interests, we are chary of any consolidation of BLM powers.

I made a few notes this morning before breakfast on grazing, and if you are interested and not in a hurry, I would not mind discussing that.

Mr. MELCHER. Yes, we are very much interested in your comments on grazing.

Mr. GARRETT. There is no doubt that overgrazing is occurring on public lands in this country, and that this has led to vegetational changes favoring brush over grasses and forbes and hastening the invasion of undesirable exotics like cheat grass and halogeton.

There is no doubt, however, that overgrazing can produce irrevocable damage. Francois Boulier, the French mammalogist, once aptly remarked that the Near East nomad, with his flocks, was far less a son of the desert than his father.

The island of Iceland, which I visited last summer, on the island the introduction of sheep in the 15th century has resulted in the almost total deforestation of the island, which was once 80 percent clothed in scrub birch. According to Dr. Bjarnson, the island's chief forester, Iceland has lost half its topsoil through wind and water erosion caused by improper grazing. I have observed erosion continuing on steep slopes, and dust blowing against the backdrop of the central glaciers.

In New Mexico, the Rio Puerco River basin has changed from a thriving agricultural area a century ago to a virtual desert because of riparian erosion brought about by overgrazing. The deepening of the stream channel, which in some places now reaches 40 feet, has drained aquifers and critically lowered the water table of the valley floor. The same thing has happened, and is happening, elsewhere in the Southwest, and to a lesser extent further north.

Overgrazing, rather than climatic changes, was the real cause of the disaster in the Sahel, as evidenced by the presence of various fenced enclaves which have remained productive in the midst of almost lunar desolation. One fenced 250,000 acre ranch in western Niger had, as of May 1974, retained an evidently sustainable capacity of about one cow per 25 acres, which is just as good as eastern Montana, though the surrounding regions had been abandoned by the nomads and appeared totally devastated.

However, before becoming too enthused about evidence of the success of modern range management, I think it is best to point out that modern technology in fact caused the disaster.

The period of intense overgrazing which destroyed the carrying capacity of the region was a function of a sudden explosion of livestock numbers. In Mali, for example, the number of cattle increased from 6 million to 11 million in 5 years.

Now, this population explosion of domestic herbivores was made possible by the drilling of hundreds of deep wells throughout the Sahel, permitting the nomads to intensely utilize areas which were unavailable to them for grazing during dry periods as long as they were dependent on natural sources of water.

If this major natural check on overgrazing had not been eliminated, the initial expansion of herds could not have occurred. With the advent of drought and the disappearance of surface water, large areas of the Sahel would simply have had to be vacated by the nomads with their flocks for the duration of the dry period, and the calamity would not have ensued.

The United Nations agencies, UNESCO and the others, by the way, who drilled the wells were searching for a technological solution to mitigate social problems which they had previously helped create themselves by promoting commercial oversubsistence agriculture. The nomads were becoming restive over the usurpation of their best range in the southern Sahel for peanut and cotton farming. This of course was undertaken in large part by agribusiness interests, tenderly encouraged by the Food and Agriculture Organization.

I guess the point I am striving here to illustrate is that we must be chary of technological panaceas to social and economic problems. It is always comforting to swallow a technological nostrum. I now move to numerous range improvement techniques, including engineering methods are clearly valuable in mitigating the effects of overgrazing. This is a part of the solution that is going to be found. The only long-term solution of overgrazing is a limitation of livestock.

There are several things about overgrazing which I think a lot of people overlook. One thing is that overgrazing in our country is an overfunction of financial instability. I have noticed that the long established incumbent families have had time to adapt to the land, who maintained stable financial operations for a long time are not likely to overgraze. To some of the best preserved land I have seen anywhere, including parks, is on privately owned land held by the old families.

On the other hand, with the banks breathing down the rancher's neck for the interest on his loan and taxes and expenses rising and

livestock prices falling, he is liable to abuse the land as an alternative to immediate financial collapse.

Now, the fact is that in the States of Wyoming and Montana particularly, the public interest lands are arranged in a checker-board pattern with private land. It is rarely feasible to fence off such lands and manage them separately. This means that the management of privately owned range lands inevitably spills over onto public land. It also means that if assuming the relationship which I have suggested between financial stability and grazing practices is valid, any person interested in public lands has some stake in the financial stability of western ranching and farming operations.

I believe in fact that that stake is far greater than this. The success which the conservation movement has had in the past few years in brunting the invasion of the West by multinational mining and oil corporations has been dependent on the stubborn resistance of western landowners and on the development of a close alliance between these landowners and the national conservation movement.

If it is not possible for livestock raisers to make a living because of depressed prices, it does precious little good to protect them from condemnation at the hands of strip miners, as was painfully accomplished in the strip mining bill.

Now, this is one reason why we support your attempt to attach the grazing fees to the market conditions. I think that is a very laudable section of your bill, one that we can wholeheartedly support.

I might as well attempt now to answer questions, Mr. Melcher, if there are any.

Mr. MELCHER. Thank you very much, Tom. You bring before this subcommittee a comprehensive understanding of what grazing on public lands means, at least to the part of the West that I am familiar with. It is a question of the family, individual families' livelihood.

I think that sometimes people get the idea that the public lands are somehow controlled by grazing interests that are vast and powerful. My experience is that the lands are used by small operators that have small portions of public lands available for grazing, for a portion of the year. They own a private holding or lease private holdings so they have the opportunity to use some public land. It work together.

Your point about making sure that these family-size operators are not crowded out is one that is of great concern to us because they are being crowded out by large corporate holdings. The community then dies quite soon or becomes very stagnant because the large corporate holdings do not really lend themselves to becoming parts of the community as do the 20 or 30 families that they have bought out or crowded out one way or another to gain vast chunks of private and public lands. So I appreciate your testimony very much and it is extremely important that we maintain in this bill the opportunity for the small operators to continue in the business. Without that, I think we will be doing a great disservice to this particular area and a disservice to the country.

The portion of your comments dealing with overgrazing are extremely important. We do not know enough about water. We do not know enough about the Powder River Basin as a matter of fact, to determine how much water can be extracted from that basin.

Of course, we are confronted in this very committee with a bill—well, it is not specifically contained in the bill—but if the coal slurry line is approved as is proposed in Wyoming, we would have questions with respect to saline water.

Frankly, we do not know what would happen by taking large quantities of water from the arid regions.

Your comments on soil were very interesting to me. I think they point out that we do need to know a great deal more about water in relationship to the land in these arid regions.

As to the specific point of overgrazing, we hope that we will enact by statute the very safeguards for preventing overgrazing that are needed. I am not pleased by BLM's current studies that 78 percent of the land is overgrazed. In view of that, it just turns me off completely to have the administration recommend that they have the authority to make their own decisions on how to correct overgrazing.

Congress should have taken the responsibility years ago and put in the law the steps that are necessary to prevent overgrazing.

Mr. MELCHER. That is not meant to be criticism of every BLM Director, of every BLM office. That is not the case at all. My experience in our country is that BLM's management of land in general is pretty good. I have been advised by BLM that the condition of ranges administered by the BLM in Montana is much better than that of other States. But I tend to feel that we can correct the problem by facing it in the legislation and by following through on oversight to make sure that range improvements are actually accomplished.

Mr. GARRETT. I have often noticed that overgrazing shows up most of all in dry years. The northern plains bounce back remarkably fast. It looks like a jack rabbit would have to pack a lunch to get across the pasture one year. The next year he is waving in the wind. Some of other lands are much more fragile. But this all suggests that what we ought to be at least thinking of is some kind of reserve for dry years range and perhaps, in fact, some kind of range bank. It may have been abused but I always thought that the soil was a good idea and I am not at all sure that the public interest would not be served by a range bank which included private as well as public lands.

Mr. MELCHER. Your observation that the better established families seem to do a better job in protecting the range is certainly borne out by my own observations. I know of many families that it is almost a religion with them. They usually use 30 to 40 percent of the grass every year and reserve some areas that are not grazed at all. And it does pay off. It does tide them over during the dry years because it is during the dry years, of course, that overgrazing results.

Mr. MELCHER. The gentleman from California.

Mr. CLAUSEN. You make reference in your testimony to the Bureau of Reclamation activities and I gather that you have had some experience or have some particular instance in mind. I would like to have you elaborate on that wherein you state that the guarantee that this agency will never be able to engage in abuses of citizens which have characterized the activities of the Bureau of Reclamation.

Mr. GARRETT. I do not think one has to go farther than the Garrison diversion project. I imagine you are familiar with that. I was

out there last year and I noticed an extraordinarily good article in a magazine on the Garrison version. The North Dakota Farmers Union complained about abuse of eminent domain. In one case a man was run out of his yard by bulldozers after having had a picnic, the house, everything there. They did not even have time to get their things out of the house, I understand.

Mr. CLAUSEN. Was this an act of an individual involved in that area, or was this the policy of the agency?

Mr. GARRETT. The Bureau of Reclamation, I understand, has kind of leased out its condemnation work to the Army Corps of Engineers recently, I think. That has been about a year ago since they did that. I think they did a pretty good job of running people out themselves but the corps will do better.

I was in Delaware Valley awhile back. There was a proposed Tocks Island project. The Tocks Island project has been pending for 10 years. It looks like a free bombing zone with houses bulldozed and bitter citizens living in trailer houses waiting it out.

But the Garrison situation is just as bad. Literally hundreds of farmers have been affected already by the McClosky Canal. Now most of those people worked all of their lives on those farms. In many cases the farms have been completely truncated and effectively ruined, and in many cases they have to go 5 to 10 miles just to get around to their fields on the other side of the canal, cave-ins and so on which were not anticipated, drainage of aquifers, loss of wildlife through this all because of this strange alluvian canal, which may never be completed because of its violation of the Boundary Waters Treaty in Canada. Assuming that it is completed, it will most certainly pollute the Souris River with potassium and destroy most of the fresh water mollusks that existed in that part of Canada.

But in any case I think that at least I am sure we can document it. I would be glad to bring it to the record, at least a hundred complaints on the part of the landowners who live along the route of the McCloskey Canal, and of course numerous other canals.

I do not think that that is anomalous. I think that is more and more par for the course. These developing agencies are getting more heavy-handed all the time.

Mr. CLAUSEN. I would be personally interested in having some documented situations.

Mr. GARRETT. I would be more than pleased to try to get that for you, sir.

Mr. CLAUSEN. I think it is important enough to put in the record. I will leave that to the discretion of the chairman. But I would personally be interested in this and having an opportunity to debate and direct some questions to the agencies involved and see if this is an established policy.

Mr. GARRETT. Mr. Moorhead is going to hold oversight hearings, I understand, shortly on Garrison, so I imagine that a lot of the information that you are desirous of can be detailed, but we can certainly get you quite a bit on short notice.

Mr. CLAUSEN. Well, I would like to have it for my own purposes because of my committee assignments dealing with the Bureau of Reclamation hearings in this committee and also in the Committee on Public Works. I would be very much interested in specific documented evidence of this.

Having pointed out this version was authorized by Congress, a canal would be established consistent with the agreement in the terms of the country's goals. Certainly they are going to move. They are going to move some earth and move some people. The question is how it is actually implemented and what your concerns are. Could they have done something? What have they done differently? Is it just a matter of their individuals taking it upon themselves to literally be discourteous to people?

Mr. GARRETT. I think it is far more than discourtesy. When you come on to a persons land and drive them off it, it strikes me as being more than merely discourteous, but we can certainly get case-by-case documentation. This is something that certainly needs airing and I think it will be aired.

Mr. CLAUSEN. Was there a court order involved? Was there a declaration of taking from the lands that are involved?

Mr. GARRETT. I do not know how that goes on a case-by-case basis, but certainly I will endeavor to find out.

Mr. CLAUSEN. I think that should be documented as well so that the full case can be presented, and I would be interested in it.

Do you feel you want to make that a part of the record, Mr. Chairman?

Mr. MELCHER. Yes, I think it should be made a part of our record because of the continuing abuse of the right of eminent domain. How we might deal with that problem in this particular legislation is being considered by this subcommittee.

Mr. CLAUSEN. Then I would ask that he be permitted to submit this information.

Mr. MELCHER. Without objection, the gentleman's request will be granted.

Without objection, so ordered.

[The information referred to follows:]

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

1. Edwin Britton, being first duly sworn, depose and say as follows: That I am the owner and operator of a combination grain and livestock farm, the headquarters of which is located in Section Three (e), Township 147 North, Range 81 West, in McLean County, North Dakota. The McClusky Canal intersects property that I own, located in the Southeast Quarter (SE $\frac{1}{4}$) of Section Seventeen (17), Township 147 North, Range 81 West and the Bureau of Reclamation also is acquiring through condemnation all of my farm real estate that I own south of the Canal right of way for wildlife development purposes. The Bureau of Reclamation is acquiring a total of approximately 34 acres for canal right of way purposes and is then acquiring a total of 321 acres of my farm real estate for wildlife purposes. My property is presently being condemned by the federal government because of the fact that I felt the price that they offered for this property was totally inadequate to allow me to purchase replacement property of equivalent value at the going prices of farm real estate in this area. I am operating my farm in partnership with one of my sons and it is essential in today's agricultural situation that I continue to maintain a unit that is of sufficient size to allow my son to earn a reasonable living on the farm. It is for this purpose that I am forced to attempt to get as much as I possibly can from this land as it is apparent from study in the real estate market in this area that I will have to have as much as I possibly can to have any chance of securing replacement real estate.

I was approached by an appraiser in July of 1970 who indicated that he was representing the Bureau of Reclamation and desired to view the land that was

to be acquired for development of the McClusky Canal. At that time, I noted he had no records showing a quarter of land that I had recently purchased on a that he did not have up-to-date information regarding my entire farm unit as Contract for Deed. When I pointed this out to him, he indicated that this land would not be considered by him in determining the amount of compensation that I should be entitled to. At that time I felt that this was quite unusual as this was part of my total farm unit and it was quite clear the Bureau of Reclamation was going to acquire a sufficient amount of property so that there were going to be substantial severance damages upon my remaining farm real estate. At this time, the appraiser did not ask any questions regarding past production history of my farmland.

I did not hear anything further regarding the acquisition of my land until sometime in the middle or late fall of 1971. At that time, I was contacted by Mr. Kliever, who was a negotiator while the Bureau of Reclamation who was to deal with me on the acquisition of my property. When he stopped in, I immediately asked him about the amount of my property that was going to be needed for canal construction purposes and the amount that was needed for wildlife purposes. Upon discussing this situation with him, I found that part of the property located in the vicinity of my real estate which was being acquired by the government was not being acquired at this time. This was property that is going to be used for wildlife development purposes and the owners of this land did not have land that the McClusky Canal itself intersected. When I inquired of him why this land was not being acquired at the present time, he indicated that the wildlife land was not going to be needed for a period of time and that therefore they were not negotiating with these individuals at this time. I then asked him if the wildlife land was not needed at this time, why they were attempting to acquire that portion of my property that was going to be used for wildlife purposes. He then indicated that it was their policy to acquire all the land that they were going to need from one landowner at one time and that because of the fact that I had some property that was for right-of-way purposes, they were going to acquire by negotiation or condemnation all of the property that they would need from me.

I felt that this policy on the part of the Bureau of Reclamation was an unfair policy as it applied to me as it allowed the other landowners to continue to enjoy the rights of ownership of their land which was going to end up being used by the government for the same purpose as my land. It just seemed to me that the government should not have any right to acquire my property or force me to sell it to them until they were actually ready to use it.

I asked the negotiator I was dealing with if there was not some way we could negotiate a settlement which would allow me to retain ownership of the wildlife portions of my land until it was actually needed. I pointed out at that time how it was of such great importance to my farming operations to maintain my ownership of this property for as long a period of time in view of the fact that I would be forced because of the farm economic situation as it applied to my own farm as well as the income tax laws to reinvest in farm real estate in a market at the present time which is completely destroyed by the fact that the Bureau was acquiring property in the area and would continue to do so for a substantial period of time. Mr. Kliever indicated that he could not negotiate with me on any other basis than on the entire amount of land that they would want and said he could not do anything further regarding my wishes.

I then contacted Mr. John Burgum, and other Bureau officials in their Bismarck office. They indicated that they didn't know if the wildlife land could be held out. One of them indicated that they would check on it, however, they never really came back and gave me a definite answer as to whether or not this could be done. At this point, I felt I should attempt to make some outside inquiry as to whether or not the Bureau of Reclamation actually had the authority to acquire my land before they were going to need it for the government project, so I directed this question to Senator Burdick's office. I shortly received a reply from Senator Burdick's office indicating that they had found that the Bureau of Reclamation actually did have the legal authority to acquire my land for wildlife purposes in this manner.

Being as how I never did get a direct answer from the Bureau of Reclamation as to whether or not they could negotiate with me on some basis where I would maintain ownership of my land needed for wildlife purposes, I had calls made to the U.S. Attorney's Office in Fargo and to the Chief of Land Acquisi-

tion for the Bureau of Reclamation in Billings, Montana. This was done shortly before the 1st of January of 1972. As a result of these calls, the Bureau did begin negotiating with me in a manner that they said would allow me to retain ownership of my property needed for wildlife. However, upon inquiring into the matter further, it appeared that what the Bureau of Reclamation wanted to do was to negotiate an option for the purchase of my remaining property at a set price. This is one of the very things that I felt was objectionable about the prior arrangements where the Bureau was going to acquire my land in that in doing so they would deny rights that I would otherwise have, in that my adjoining neighbor landowners would also have to enjoy the appreciate on the value of their land during the remaining period of time that would elapse until the government would actually acquire theirs. I therefore decided that this option agreement was not the type of a transaction that I would desire to enter into.

The biggest problem that I had during these negotiations during late December and early January of 1972 was that I had to do all of the work in carrying on these negotiations and it appeared that the Bureau of Reclamation did not attempt to cooperate with me or to follow up and to make these negotiations as convenient and easy as possible for me. It was also during this period of time that I was forced to be hospitalized for an operation and during this period of time the Bureau made no further efforts to carry on any negotiations or to dissolve any differences during the acquisition of this land, particularly as to the objectionable features of their getting an option on the property. Shortly after I was released from the hospital, my land was condemned, and negotiations with the Bureau of Reclamation were substantially cut off. Just before the land was condemned, they did call and say they wanted to talk with me once more. This was a time when I was not feeling too well, so an appointment was made for the following day, however, they did not keep this appointment.

It was then at the meeting in McClusky where the Bureau's land acquisition policies were being reviewed in July of 1972 that I learned that the Bureau in fact negotiated with other land owners and not condemned or taken the land that would be needed for wildlife purposes, but rather only purchased the canal right-of-way. This was the exact situation that I was in and was the basis upon which I was attempting to negotiate with the Bureau prior to being hospitalized. At that time when I inquired as to why they refused to negotiate with me on this basis, they indicated that they had attempted to negotiate with me on what I wanted, and that they had offered this option agreement which I had requested. At this time, I pointed out to them that I had never requested this option agreement, and that this was a suggestion that was made by someone in the Bismarck office and apparently by the time it got to Billings, it was interpreted as something that I wanted. At that time, Mr. McDougal from the Billings office of the Department of Interior indicated that he would determine if it was still possible to negotiate a settlement on the condemnation action which would allow title to the land, which would be needed for wildlife purposes eventually, to be reverted in myself. The last word that I have received from the Bureau of Reclamation is that there is a possibility that this can be done, but that there are some substantial problems in doing so, and they would prefer not to. I am still hopeful that this can be negotiated as I feel I am entitled to this consideration. One of the objections that the Bureau raised recently was the fact that they would have to go back and offer the same settlement to the other landowners similarly affected by wildlife and canal right-of-way acquisition. It would seem to me that this would be the least the Bureau should be obligated to do for all landowners affected as it should be their responsibility to acquire the land needed for this project in such a manner as to least disrupt the farming operations for the landowners concerned.

One final objection that I have has to do with the planning that went into this project. Much of the land that they are acquiring from myself is land that is as productive farm land that you will find in this area. Other portions of the land are marshy, slough areas which can be developed as good wildlife production areas. It would seem to me that good stewardship of this land would require that those portions of it best suited for wildlife development should be allowed to be developed for this purpose, but on the other hand, those portions of the land that are best suited for crop production purposes should remain in crop production. It appears that very little consideration was given throughout this entire project to the fact that they will be dealing with several different types of land and that some of the land that they are proposing to take

out of production should actually be left in production as that is the manner in which it continue to offer the most benefits to our country as a whole. It would seem that arrangement could be made with myself and other landowners similarly affected so that if such was wanted, the public could be given easement rights so that they could enjoy whatever hunting and other sporting activities were developed upon the property and that the land could continue to remain in production and that portion of the land which is best suited for agricultural use could remain in production. I would think that some annual payment could be set to compensate myself and the other landowners similarly affected for whatever loss we would have because of the limitations placed upon our use of this land. However, it would then continue to be on the tax rolls and would be included in the whole value of property for taxation purposes within a school district which is the basis upon which the amount of bonded indebtedness that a school district and other local government unit can undertake to finance new construction. Under the present law, the payment in lieu of taxes that the federal government makes for land that it takes off the tax rolls does not do anything to compensate the local government's concern for the loss of taxable evaluation and subsequent loss of the ability to finance bonded indebtedness for construction.

One of the problems that has arisen which makes the Bureau's original appraisals totally inadequate is the fact that land prices in this area have risen a very great amount in the last two year period and therefore the appraisals which may have been somewhat reasonable when they were originally made in 1969 and 1970 by the Bureau of Reclamation are totally unreasonable when you consider the real estate market in this area at the time we began negotiations and actually condemned the property. In addition, it appears that the appraisers that were placing values on farm real estate in this area did not fully appreciate the great variance in value that there actually is for agricultural purposes in farm land in this area. As a result, there does not appear to be too much difference in the valuations placed upon the very productive farm land that they have acquired for canal and wildlife purposes in the area, and the valuations that they placed upon the lighter, less productive land that they have also acquired for the canal right-of-way and wildlife purposes. In addition, the fact that they continually refuse to state the amount of severance that they were offering at the negotiation stage, made it almost impossible for a landowner to determine what they were actually offering for his land. I believe that this actually tended to confuse and further frustrate the land values in this area as the net result of this was that those individuals who settled on the price of their farm real estate tended to treat the full amount that they received as value of their land and to discount the fact that a portion of that was actually severance damages which represented loss that they were suffering on the value of their remaining land.

I have been informed by my local ASCS office that the wheat and other crop histories which are attributable to my land being acquired by wildlife will remain with this land and will not remain with the remainder of my farm unit. This was contrary to the information that was originally made available to me from the ASCS office. I have been led to believe that these crop histories could be retained and transferred to other land which I might be able to acquire which did not have comparable cropping histories. This can amount to a very substantial loss to me because of the fact that there is land available in this area which would make good cropland but which has not been placed in production and therefore has less value for cropping purposes because of the present ASCS farm programs.

Finally, on several occasions, I asked if the government was going to cooperate or undertake any programs to try and assist myself and other similarly affected landowners whose farming operations were being seriously affected by the government's acquisition of a substantial portion of the farm in obtaining additional replacement land or in compensating us for the additional expenses such as real estate agents fees and so on that we would have to incur in order to locate additional replacement property. At the meetings in McClusky, Bureau personnel indicated that they were following the recently enacted Uniform Real Estate Acquisition Act and that it was applicable to this project. In looking at this act, it appears that the government agency that is acquiring land that is subject to this act has an affirmative responsibility to initiate steps to minimize the affect that this acquisition will have upon them. One section of the act particularly points out farming and seems to be adaptable even if a farm fam-

ily is not actually dislocated. However, I cannot find where the Bureau of Reclamation is actually undertaking any steps as provided in this act to minimize the affects that their acquisition will have upon the farmers who are left in the area or otherwise compensating them for this loss.

EDWIN BRITTON.

On this 22nd day of September, 1972, before me personally appeared Edwin Britton, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean ss:

I, Ezra E. Evans, being first duly sworn, depose and say as follows: That I am the owner and operator of a combination grain and livestock farm located in Section Thirty-three (33), Township 146 North, Range 80 West, and I also have farm land that I own located in Township 145 North, Range 80 West. My address is Turtle Lake, North Dakota. The Bureau of Reclamation is presently condemning four hundred forty-five (445) acres of my farmland for canal right-of-way and wildlife purposes. I own a total of one thousand two hundred eighty (1,280) acres. This acquisition of my land will split my farm into three separate pieces.

The first objection that I have to the Bureau of Reclamation Land Acquisition policies is that they attempted to negotiate a settlement price for the land they wanted to acquire from me prior to their making a final decision on the location of bridges that would affect me and my access to my remaining land. I pointed this out to the negotiators at the time they approached me but they continued to press me to enter into negotiations with them. At that point I refused to negotiate with them until this point was definitely determined and subsequently my land was condemned by the government. I feel that in a project of this nature the government should have all of its decisions made and they should make their plans known to the landowners who will be affected thereby so that all negotiations that subsequently follow regarding the acquisition of the land that is needed for the project can be carried on with a true understanding by the landowner concerned as to how the project will affect him. Without knowing this I feel it was impossible for me to negotiate and I do not feel that I have actually had an opportunity to enter into meaningful negotiations with the Bureau for the acquisition of my land.

The bridge that I am referring to would be located in Section Thirty-three (33) Township 146 North, Range 80 West. This is a bridge that I not only need for access to my remaining farm land but I will need it in order to continue to cooperate in my farming activities with my brother, Leroy Evans and nephew, Robert Evans. This is an arrangement that has existed for several years between us and has been mutually advantageous to all parties concerned.

Another problem that I have noted is that when the Bureau was attempting to enter into negotiations and now after condemnation action has been initiated I find that it is very difficult to carry on negotiations with the Bureau personnel and in particular with Mr. John Burgum. My experience with Mr. Burgum is that I will get the impression that we have reached an understanding on a point when I meet with him only to find that upon meeting with him at a subsequent time this subject is something that he doesn't seem to recall at all and is not a matter that has been agreed upon between us. An example of this is my negotiations with Mr. Burgum to attempt to get the government to purchase two separate tracts which under the condemnation action would be entirely separated from my remaining farming operations, one consisting of fifteen (15) acres and the other consisting of forty (40) acres. On two or three separate occasions I have been led to believe by Mr. Burgum that this property could be acquired by the government but then I find upon my next visit with him or with the U.S. Attorney's Office that nothing has been done to determine if this property can also be acquired by the government. This is quite an important negotiation item to me in that those remaining parcels would have very little if any value to me separated as they will be from my remaining farming activities.

Of the total of four hundred forty five (445) acres that the Bureau of Reclamation is condemning of the property that belongs to me, approximately two hundred (200) acres of this property will not be used for the canal itself but rather will be used for wildlife purposes to restore that wildlife habitat that is destroyed by the construction of the canal. I feel that this portion of the Garrison Diversion Program is a program that unnecessarily places an additional strain and burden upon the landowners who are affected by it and also upon the entire community of Turtle Lake. This land is my choice farm land and in the years that I have farmed it has always been the area that I could look for my top yields for crops. This then not only drastically reduces the value of my remaining farm land but denies to the town of Turtle Lake the productive capacity of this farmland. In addition this land is removed from the tax rolls and while I realize there are certain government programs to partially replace the tax dollars lost, the value of the land is lost to the government subdivisions concerned for the purpose of incurring bonded indebtedness and also paying off this bonded indebtedness. I would feel that some program could be arranged where that portion of this land that the Bureau wants to acquire from me for wildlife purposes which is best suited for farming could remain in farm production. I would not object to entering into an arrangement with the Bureau of Reclamation or the Department of the Interior whereby that portion of my land which they desire to acquire which is best suited for wildlife purposes and furnishes good wildlife cover and habitat to turn such property over to them or to make other suitable arrangements so that it's wildlife value will be preserved so that if they wish, provisions could be made so that the public could have access to it for hunting and recreational purposes.

I also feel that the law pertaining to the income tax treatment for the proceeds of the land that I own that is being condemned should be changed so that it would not adversely affect individuals such as myself who are approaching retirement age and find that they are about to lose their land under terms that they cannot control at a time when they also cannot control the sale of it. If my property were not being condemned and if I were allowed to arrange my retirement affairs I would have had an opportunity to have considered and negotiated a possible installment sale of my farm real estate so that I could have spread the income tax consequences of the sale over several years and could have minimized the tax consequences. As a result of these condemnation proceedings, the only alternative that I will have to avoid paying income tax in one lump sum on the proceeds of my land is to reinvest in additional land. This is not a feasible alternative for an individual of my age. However this is an item that is not considered in determining the amount that I should receive for my loss as a result of this project. As I understand it the only way that this could be rectified is by a change in the law and I feel that the law should be changed so that I could have a greater choice in determining the reinvestment of the proceeds of the sale of my land in condemnation so that it may better suit my future retirement plans. My final point of criticism is that the price that the Bureau offered me was totally inadequate when you consider the amount that the loss of the land that they want to acquire will decrease the value of my land and add that loss to the value of the land they are acquiring. It would appear that they were using figures that must be several years old in determining the prevailing market value of land in this area as there are no sales that I am aware of in the last couple of years with the possible exception of some family transactions that I don't know about which involve sale prices as low as that which they are offering to me. In addition it was impossible to determine the amount that the Bureau was actually offering for my land as they continually refused to disclose the amount they were allowing for severance damages and the amount that they were actually offering for the value of my land. This is an item I felt was absolutely essential for me to know in order to determine if they were making a realistic offer to me for my farmland.

EZRA E. EVANS.

On this 22nd day of September, 1972, before me personally appeared Ezra E. Evans, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, Robert L. Evans, being first duly sworn, depose and say as follows: That I am the owner of a farm located in Section Twenty-nine (29), Township 146 North, Range 80 West, located in McLean County, North Dakota, south of Turtle Lake. In my farming operations I share work and equipment with my father, Roy Evans and also my uncle, Ezra Evans. The general nature of our relationship is such that it has been of a great advantage to a young person such as myself in getting started in farming. I do not have any land that is directly involved in the McClusky Canal Project. The project does substantially affect myself and the relationship that I have had with my father and my uncle in that it is now going to be much more inconvenient to cooperate in the activities that we have previously been able to cooperate on. The biggest single item which I feel has to be corrected is the installation of adequate bridges across the McClusky Canal so that established transportation routes in the area south of Turtle Lake will not be disrupted by the construction of the canal. Turtle Lake, North Dakota, remains my principle shopping center and the area where I market my farm produce. If a bridge is not installed to preserve the road that runs south of Turtle Lake in Township 145 North, Range 80 West, and between Sections Thirty-two (32) and Thirty-three (33), this road will be disrupted by the construction of the canal and the installation of a bridge to preserve this transportation route will be used by several of the farmers in my area and from my observations will also be used by several other people who wish to use this route as a shortcut to get to Bismarck.

One other problem which perhaps does not indicate a situation that can be corrected in any way but does show the social and economic disruption that a project such as this causes to our area is the fact that I will now be somewhat limited in my future expansion of my farming operations in that it will be much more inconvenient for me to rent or purchase land located across the canal than what is presently is without having to deal with the canal.

In addition to limiting my future expansion I have also been informed that I will have no chance of obtaining any water to use for irrigation, livestock or any other purposes that I may have arising in my future farming operations which I feel would be a minimum right that I have considering the great deal of inconveniences this project gives to me.

ROBERT EVANS.

On this 22nd day of September, 1972, before me personally appeared Robert L. Evans, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires: January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, Roy Evans, being first duly sworn, depose and say as follows: That I am the owner and operator of a combination grain and livestock farm located in Township 145 North, Range 80, West, in McLean County, North Dakota. A very small amount of my property is involved in the canal right-of-way for the McClusky Canal. The biggest problem that this project poses to me and my farming operations is the location of the bridges across the canal. Turtle Lake, North Dakota is my principle shopping area and is also the town where all school, medical and other needs of a farm family are supplied for me. In addition it is also the center where I market all of my farm produce. At the present time there is a great deal of question as to whether or not there will be a North, Range 80 West, which is an absolute necessity for me as this bridge bridge situated across the canal in Section Thirty-three (33), Township 146 would replace the road that presently serves as my principle means of getting to Turtle Lake which runs between Sections Thirty-two (32) and Thirty-three

(33) straight north to Turtle Lake in Township 146 North, Range 80 West. This is a matter that is of very great importance to me and to the other farm owners and operators in my area as we all use this road as our principle route to get to Turtle Lake and all of us rely upon Turtle Lake for the same items and services that I have previously mentioned.

The Bureau has at times made the statement that they will provide alternate bridges which will still satisfy our need for access to Turtle Lake. What is not taken into consideration is the fact that any alternate bridges that are put in will substantially increase our transportation expenses and these are items that most of us have no way of recovering these additional expenses from the government. I would think that the government is under an obligation to leave the entire Turtle Lake area in as nearly the same condition as they found it before they started this project. Bridges and established transportation routes are one of the very important items that the Bureau should respect and should not interrupt any more than is absolutely necessary.

LEROY EVANS.

On this 22nd day of September, 1972, before me personally appeared Roy Evans known to me to be the person described in and executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires: January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, Donald Goven, being first duly sworn, depose and say as follows: That I am the owner and operator of a combination grain and livestock farm, the headquarters of which is located in Section Twenty-nine (29), Township 146 North, Range 80 West, in McLean County, North Dakota. The McClusky Canal which present time a total of three hundred fifty (350) acres of my real estate are is being constructed in this area runs through portions of my land and at the being condemned by the Bureau of Reclamation for canal right-of-way and wildlife purposes. An appraiser came to my farm in March of 1971 who represented the Bureau of Reclamation. At that time he reviewed my farm layout, however he did not ask for any information and to my knowledge did not receive any information regarding the yields or anything else which would indicate the productivity of my land that was being condemned for the McClusky Canal Project. Thereafter I was contacted by negotiators and after meeting with the negotiator several times but at no time during these negotiations was I able to determine from the negotiator the value that the government was willing to pay for my farmland and the value that it was willing to pay for the pasture land and also the amount of severance damages that they were including in their offer to me. I have subsequently learned from the U.S. Attorney's Office and from the individual who is handling my condemnation action that the government was offering one hundred twenty-five dollars (\$125.00) per acre for my farm land and sixty dollars (\$60.00) per acre for my pasture land that is being condemned.

These offers are entirely inadequate because of the fact that I have been negotiating and have purchased some replacement property already. The prices that I have had to pay for the replacement property, which is very much more inconvenient and not as valuable to my entire farming operation, substantially exceeds the offered prices of the government by about thirty-five (35) to fifty (50) percent.

I would think that the Bureau of Reclamation would have access to information which would indicate the going market price of land at the time that they initiate their condemnation proceedings and should be in a position to make settlement offers which are nearly in line with the prevailing market prices at the time that they take the land.

DONALD GOVERN.

STATE OF NORTH DAKOTA,
County of McLean, ss:

On this 22nd day of September, 1972, before me personally appeared Donald Goven, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires: January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, Earl L. Goven, being first duly sworn, depose and say as follows: That I am the owner of a combination grain and livestock farm, headquarters of which is located in Section 18, Township 147 North, Range 80 West, in McLean County, North Dakota. The McClusky Canal passes through land which I own and right-of-way for the same requires a total of approximately 135 to 140 acres of my property.

From the time I was first contacted by Bureau of Reclamation personnel regarding the acquisition of my property, I noted that they continually showed an arrogant attitude towards me regarding the purchase of my property. Whenever they would enter into negotiations with me, they would always seem to preface whatever statement they would make by saying, "You know we can always enter into condemnation with you if we cannot agree on a negotiated settlement for your property." On one occasion, I complained to some other Bureau officials regarding the general attitude of the appraiser who was dealing with me and was informed that "that individual is no longer with us." This statement was given to me within the general conotation that that would give me a certain amount of satisfaction, however, it really didn't change the general attitude that the Bureau officials had regarding their negotiations with me.

I had several questions that I wanted to have answered regarding the impact that the construction of the canal would have upon myself and my farming operations and the general manner that they would carry out the construction of the canal, however, I did not receive satisfactory answers to any of these questions. In addition, when I would attempt to negotiate with Bureau personnel on specific items, I was always told or given the impression that the negotiations would have to be conducted in the manner that the Bureau officials dictated or there would be no negotiations at all.

I finally entered into an agreement to sell my property with the Bureau of Reclamation, not because of the fact that I felt the Bureau had necessarily given me a satisfactory offer as a result of mutual negotiations, but rather because of the fact that I had made independant arrangements on my own to purchase replacement property and felt that I should now enter into an agreement with the Bureau to sell my property so that I could facilitate the financing of this replacement property. At that time, I was assured that I would receive my money for the sale of my land within a 90 day period. The agreement to sell my land was signed with the Bureau during December of 1971. However, instead of receiving the money within 90 days as I had been assured, it took approximately six months to receive my money. There was no reason for this delay as my title to all my property that was being purchased by the Bureau was up-to-date and there were no flaws upon my title which had to be cured. The only delay involved was caused solely by the Bureau's failure to process my sale in an expeditious manner.

One of the areas that was particularly troublesome to me in which I found it impossible to get any answers was the placement of the bridges at various points across the canal and the manner in which they would affect my farming operations. I farm a total of approximately 2800 acres and this land is spread out over a 20 mile radius from my farmstead. I own or am purchasing all of this property so the problems that will be created regarding the transportation to this land are going to be problems that I will be living with as long as I own this farm and were extremely important to me. However, when I tried to determine the areas that the bridges would be located, I was always met with

the answer that they are tentatively scheduled to be located in a certain place, but that a definite decision had not been made. Actually, with this type of an answer being given to me, it was impossible for me to actually determine the impact that the construction of the canal would have upon my farming operations which I feel was a very important factor in my determining the amount of money I should receive for the purchase of my property.

Another problem that I noted regarding the Bureau's policies as they affect the purchase of my property, was the fact that they did not allow any severance damages for the property that I own with my wife in joint tenancy. The reason that was given to me for this fact was that the property that they were purchasing from me was owned in my own name and the property that I owned in joint tenancy with my wife cannot be considered as part of this same unit, in spite of the fact it is in fact operated by myself as part of my farming unit and is actually an integral part of the same and is being purchased and paid for by the money that I earn from my farming operations. In fact, I have checked into this particular aspect in some detail and have found that the Internal Revenue Service considers property that is owned in joint tenancy by a husband and wife, such as in my situation, to be actually owned completely by myself if I should pass away first for Estate Tax purposes and my wife would be under an obligation to show that she actually contributed a portion of the funds for the purchase of this property in order to avoid it to be taxed in my estate.

I also object to the fact that the Bureau of Reclamation either would not or could not give any advance notice as to a time table that they would be following in the acquisition and subsequent steps leading up to the actual beginning construction of the McClusky Canal in this area. It did not seem to recognize that farming is an operation that requires a great deal of planning and if they would have made their intentions known regarding the utilization and acquisition of canal right-of-way, they could have avoided a great deal of trouble and inconvenience for most of the farmers concerned. However, instead they seemed to come into the area on very short notice actually began negotiations in the fall of 1971 after the crop had been removed and had acquired property either by condemnation or negotiations prior to the beginning of spring's work in 1972. Such fast action of this sort is bound to create many untenable situations for the persons affected by the acquisition and certainly could have been avoided by a more definite time table and more advanced planning.

One of my constant objections to this project is the fact that the landowners along the canal right-of-way are not being granted any water rights for the use of the water in the canal. I have now read recent releases from the Bureau of Reclamation or from the Garrison Conservancy District indicating that water from the canal may be made available to the landowners in this area on a year to year basis. It would appear to me that making water available to us at all as the practical effect of such an arrangement would be that the water would be available to us in those years when we needed the least, and in those years when we would need the water the most, most likely the water would not be available. Actually, without Garrison Diversion, we have water available to us on a year to year basis and I do not feel such an arrangement with the Bureau of Reclamation would be any practical benefit to us in this area at all. I do however, feel that there should be enough water available from this canal so that the landowners in this area and particularly those who are being affected by the acquisition by canal right-of-way should be able to have water rights to the water in the canal and be able to use the same in their farming operations.

I have also noted that some of the politicians in this area have raised the point that at the time this project was originally being considered, there were no objections raised to it and that all the testimony presented to Congress was testimony in favor of the project. This point is then carried on to say that now it is too late to raise objections and that we should merely sit back and take our lumps and go into court and try to get whatever we are legally entitled to but that the project should proceed on schedule. I do not feel that this is a valid point to raise because of the fact that the only persons or group that actually knew about the project and the impact that it would have upon this area was the Bureau of Reclamation. From their present conduct, it is apparent that they have been constantly following a policy of getting this proj-

ect not only approved but constructed and that they have minimized the adverse consequences of this project. If any of the private citizens would have raised objections at that point, they would have not been valid knowledgeable objections based upon any facts that would have been founded upon any scientific or knowledgeable observations of how the project would affect this community. Instead, they would have been objections of individual persons concerned with the project who would have been simply afraid that they might lose some of their land. At the present time, this is the light in which some of the proponents of the project are attempting to paint the objectors, however the fact is that now even those of us who have no particular expertise in the field of environmental impact are aware of the impact that earlier phases of this project has had upon the surrounding environment, particularly in the area around McClusky, and we are now raising questions about what has been done to assure that these same adverse effects will not be had in our area. An observer who is being affected can only raise two questions regarding the early testimony that was given Congress regarding this project, and that is #1—that the full impact that this project will have upon the environment was not studied and appreciated or #2—if the impact upon the environment was in fact studied, the results of these studies were covered up and not made available to the public or to Congress.

One area regarding the impact that the construction of this canal will have upon a local area ecology is that fact that in the process of constructing the canal, the water table in this area is being drained, the exact extent of which has not been made public. Last spring, I was approached by a Bureau of Reclamation official who requested permission to drill a test well near my wells located on my farmstead so that they could observe the effect that they would have regarding the lowering of the water table in the area of my farmstead. I signed the necessary documents so that this test well could be dug, however, to date, the test well has never been dug. However, they did go ahead with construction of the canal, and the draining of the water table in this area has already begun. In fact, it has been going on for approximately two months. I anticipate that they will be bringing the drilling rigs sometime later this fall so that they can drill the test well after the damage has been done, and then take the position that actually my water problems are not caused by the canal construction but rather by some other natural phenomenon which they had no control over.

In addition to the effect that the lowering of the water table will have upon the wells on my farm, I am also very concerned upon the effect that this will have upon the single row of shelter belts that I have growing in the area of the canal on my property. I have a total of two and a half (2½) miles of single row shelter belt growing in this area, and I have been informed by people who are knowledgeable in the field that one mile of single row shelter belt will add a total of \$2,000.00 in value to my property. This then would indicate that the single row shelter belt that I have growing in the area of the canal upon my property would add approximately \$5,000.00 to the value of this property.

These trees have been growing for approximately 15 years and their roots are now deep enough so that they are into the established water table in this area. I am very concerned, however, that with the lowering of the water table due to the construction of the canal, the trees will have to become dependant upon the supply of moisture from the annual rainfall in this area in order to sustain themselves. In this area, we do have prolonged periods of drought. If a period of drought should follow shortly after the construction of the canal, I am afraid that these trees and the trees that other landowners along the canal have planted will suffer as a result of it. Because of the high water table that had been established prior to the construction of the canal, these trees could have weathered a prolonged drought without any damage, but if this water from the water table is not available to sustain them, they could be killed in a very short time due to drought conditions.

I have raised this problem of the lowering of the water table with some of the Bureau officials and they have indicated to me that I should not be concerned about this as once the canal is finished and water is placed in it that there will be enough seepage from the canal to replenish the water table in a very short period of time. This may well be true, however, I think it should be noted that in other areas where people are concerned that there will be seep-

age from the canal which will adversely affect them, other Bureau officials have assured these individuals that through construction techniques they have made the canal virtually seepage-proof and that there will not be any significant seepage from the canal. This, I think, is just another indication of the arrogance that I originally mentioned that the Bureau of Reclamation shows in the construction of this canal, and the fact that they will take any position and make any statement without any regard to whether or not they are actually basing this statement upon facts which have been established by independent analysis.

I also feel that whenever the federal government is contemplating undertaking a project of the magnitude of the Garrison Diversion project, they should for the protection of the general public, rely upon studies and analysis conducted by some group other than the Bureau of Reclamation, which has a vested interest in seeing that the project is approved to determine if the project is feasible and if it is something that can actually be constructed for the benefit of the public. After I learned that the project was going to affect me, I have done what studying there is available to me from information available to the general public, and I have a great many questions about whether or not cost benefits studies, which were conducted for this project, are actually based upon current data and information relative to agricultural needs in this country and farming practices in this area. In addition, I would question whether or not if the true cost of this project were accurately projected and known at the time it was approved if Congress would have decided that in view of the other priority needs that our country has, that this project should have deserved funding in the amounts that would be necessary to actually see it through to completion. The very point that I am trying to make by this is that the group that is responsible in protecting the public's interest in determining if a project is feasible should not be the same group that has responsibilities for carrying on the construction phase of the project after it is once approved by Congress. In this situation, it is obvious that the group that is responsible for protecting the public interests in these projects has a vested right in seeing that they are approved so that the same group may continue to exist and work to do and jobs to be taken on.

My final observation is that the general impression that has been given by most of the newspapers in the North Dakota area and by most of the politicians in this area is that the Garrison Diversion project is a sacred cow that we have waited many years to get and that now no one should raise any questions regarding the project for fear we may lose it and that if we lose it, we will be losing something that the state badly needs. I would think that if the project is that terribly beneficial to the state, it should be able to sustain whatever questions that are being raised and that if there are some things that are being done at the present time that are wrong, that corrections can be made and that the project can still be carried on to completion. On the other hand, if the questions are valid and if in fact the project will not deliver the benefits to this state originally foreseen or if its adverse impact upon the ecology of this area is not compensated for by the benefits or if the environment will be destroyed then the project should be stopped before it is too late.

EARL L. GOVEN.

On this 22nd day of September, 1972, before me personally appeared Earl L. Goven, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires: January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, Alvin Wall, being first duly sworn, depose and say as follows:

I am the owner of a farm located south of Mercer, North Dakota in Township 145 North, Range 79 West and Township 145 North, Range 80 West, consisting of a total of 1,360 acres of land. My farmstead is located in Section Nine (9) of

Township 145 North, Range 79 West. I first became aware that part of my land was going to be needed for the McClusky Canal project in the mid 1960's.

In 1966 I purchased a quarter of farmland which shortly thereafter the Bureau began doing some surveying and staking on it. That year while I was working some of the farmland, the stakes that were left on the land by the government officials were run over by my pickup, destroying two of the pickup tires at a total cost of approximately \$75.00. At that time I attempted to get compensation for my loss but was informed by the Bureau of Reclamation that I would have to know which governmental agency it was that was on the land, as the Fish and Wildlife Service was also doing survey work in this area, I, at that time, told them I had no idea who it was other than the fact that it was U.S. Government pickups on my land. At that time and thereafter, none of the government employees who would be doing surveying and other work in my area would ask permission before going on the land, they would merely go on the land. It was because of this practice that it was impossible for me to know who it was that did the work that caused my damages. Because of this technicality I was never reimbursed for the loss of my pickup tires.

Thereafter, I adopted a policy of chasing off all government vehicles and employees as soon as I would find them on my land. This became a constant struggle as they would never ask for permission to enter my premises and it would be up to me to try and keep track of all my property and determine when they were entering upon it. On several occasions when I chased them off they threatened me with condemnation action if I would not change my position and give them permission to enter the land. I felt that if the government wanted to condemn my property to do whatever they wanted to do on it, that's what they should do; but that the government had not treated me fairly when they first initiated the primary steps in surveying my property and I was under no obligation to cooperate with them at this time.

In the spring of 1971 I was contacted by a negotiator. He indicated that the government wanted to buy the Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-four (24), Township 145 North, Range 80 West, as well as the South Half of the Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$) and the West Half of the Southeast Quarter ($W\frac{1}{2}SE\frac{1}{4}$) of Section Six (6), Township 145 North, Range 79 West and also the north 60 acres of the Northeast Quarter ($NE\frac{1}{4}$) of Section Seven (7), Township 145 North, Range 79 West, all of which belonged to me. The total acreage that he wished to purchase amounted to 380 acres. At this time he offered a total purchase price for this amount of land of \$40,000.00. At that time, I attempted to show the negotiator my records showing that I had made investments in this land over and above the purchase price of the same which totaled substantially more than the amount that they were offering me for it. The improvements and investments that I made in the land over and above the initial purchase price included breaking the grass growing on it and converting it to cropland, draining sloughs located upon it, picking rocks located on it, putting fences on it, and digging stock watering ponds on it. I also attempted to show him my general farm layout and to go over the investment that I have in farm equipment and to show how this particular piece of property fits in well with my overall grain operation and was the only portion of my property that allowed me to round out my operation with the livestock operation as well. At that time the negotiator told me that he could not go over any of these things with me because it wouldn't make any difference with what he could offer me. He also indicated at that time that I was not going to receive any severance damages for the quarter located in Township 145 North, Range 80 West; and, he further indicated that he would not disclose to me the amount of severance damages that I would be entitled to receive as a result of his offer for the remainder of my land.

In the fall of 1971, this same negotiator returned and made a new offer to me of \$42,500.00 for this amount of my land. I again refused this offer.

I have taken the position that I cannot make a settlement with the government because of the fact that they have not shown any willingness to sit down and actually try and determine the special situation that my farm is in. Instead, they simply came upon my property and made an offer to me which appears to make no provisions for the fact that I have a total of \$100,000.00 based upon the new replacement cost of farm equipment which I will not be fully utilizing after the land that the government wants has been taken over and they also seem to totally ignore the fact that I am farming in an area where crop failures are not a thing that never happen but rather do occasionally happen and the live-

stock portion of my operation adds a great deal of stability during these drought years.

The only opportunity I ever had to actually discuss my farming operation was early in the spring of 1971 when a man came to the farm and asked to take pictures of my farming operation which would be used by the appraisers. I accompanied him while he took the pictures. He did not indicate any interest in how this particular land fit in with the rest of my farming operations and did not ask any questions about my general farming operations at all.

I feel that I would have been in a much better position to negotiate with the government if they had contacted me earlier regarding the acquisition of my land and given me some idea of what their initial offer would be. If this had been done I would have then been in a position to buy and locate replacement land prior to the time that the price of land has appreciated so much because of the government's activity in the area. As it is now, I not only have to bear the loss that the remaining portion of my land will suffer because of its decreased value but will be forced to put a great deal of expense to try and locate replacement land which will have to be located a great distance from my present farming operations.

ALVIN WALL.

On this 3 day of Oct., 1972, before me personally appeared Alvin Wall, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same.

DOUGLAS R. HANSON,
Notary Public,
Turtle Lake, McLean County, N. Dak.

My Commission Expires: May 21, 1977.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, Harold Sellon, being first duly sworn, depose and say as follows: That I am the owner and operator of a combination grain and livestock farm, the headquarters of which is located in the Southwest Quarter (SW¼) of Section 8, Township 147 North, Range 81 West in McLean County, North Dakota.

The McCisuky Canal intersects property that I own in Section 18 of Township 147 North, Range 87 West, in two separate areas. The total amount of property needed for canal right-of-way that I own was approximately 47 acres. I was first contacted by the Bureau of Reclamation people requesting authority to survey on my land some 7 or 8 years ago, at which time I refused to give them permission to survey on my land. They went ahead without my permission and conducted surveys and seemed to ignore my wishes for them to stay off my property. Thereafter, I did decide that I might as well give them permission as they were going ahead anyway and did sign the necessary papers to give them the authority to survey upon my property.

I was subsequently contacted by negotiators who attempted to make a settlement with me for the purchase of my land that was needed for the canal right-of-way. Throughout these negotiations, and after we had made our agreement, I was impressed by the fact that the Bureau of Reclamation negotiators and the other individuals who had responsibility for settling land transactions seemed to conduct these affairs in a very unbusinesslike manner. An example of this was the fact that they would continually say that I would have to trust them in all affairs but that they did not seem to trust myself in any of these transactions. An example of their unbusinesslike way of conducting business was when I was told that they would have the money available and we would have the closing on a certain date. When I appeared and all the papers had been signed transferring my property to the Bureau of Reclamation, I was informed that they did not bring the checks with them, but that they would have to take the deeds, record them, and then make one final review of the records to make sure I was entitled to my money. In all other transactions that I have been involved in, the purchaser of the property has made all of his review of the records that he feels is necessary up to and immediately at the time of the closing and at the time of the closing, the deeds are signed and the money is

transferred and the seller does not have to wait an additional period of time to get his money.

One additional observation I have is that myself, and I believe most other people who are affected by the McClusky Canal either through the loss of property or through disruption of their farming activities, did not fully appreciate the full impact that this canal was going to have upon their farm until after the construction has begun and we are able to actually begin to see the manner in which it will disrupt our normal farming activities. After seeing all of these things, I feel that compensation that I received for the value of my land and for the severance damages is very inadequate for the actual damages and disruption that my farm has received and for the great inconvenience that myself and subsequent owners and operators of my farm will have to put up with as a result of this McClusky Canal. In addition, it seems to me to be very wrong that besides having to put up with all this disruption and inconvenience, I cannot receive a little bit of water from the canal. An example of where I could use some water from the canal is in part of my pasture which is now separated by the construction of the canal. If I could receive a little bit of water from the canal, this would still remain a productive pasture area for me and could support a small number of livestock. The way it is, this is an approximately 20 or 25 acre tract of land which without water is of very limited value to anyone.

In addition, while the canal was being constructed, there were certain approaches and other items that I was promised would be constructed so that I would have access to some of my areas of land that are left isolated. I have made several attempts to find the Bureau official whose name is Mr. Bastine, who was in charge of construction in this area to make sure that these matters are going to be taken care of during the construction phase of the project. However, it seems that this person is very difficult to locate, and almost at times, seems to intentionally keep himself so far away from the public that we cannot contact. I do not feel it is right that I should be forced to run to Bismarck to make sure that these items are taken care of.

One other item that I feel has not been fully studied by the Bureau of Reclamation is the impact that the construction of this project is going to have upon our local taxes. As a result of the construction of the canal, there are several roads which, prior to this time, have adequately served the needs of this area which will now become valueless because of the fact that there is no longer a bridge over the canal so that the road cannot be used. In addition to that, the canal has constructed some new roads along the canal right-of-way for public purposes, but it appears to me to be quite apparent that by the construction of some of these roads, they are going to create new traffic patterns which will create needs for additional roads which are going to have to be paid for by the local taxpayers. In addition, I am concerned about the great deal of land that is being taken off the tax rolls by the acquisition of right-of-way and wildlife land and feel that the present amount of money that is returned to the local taxing authorities in lieu of taxes by the federal government is totally inadequate to compensate for this tax loss to the local government.

HAROLD SELLON.

On this 22nd day of September, 1972, before me personally appeared Harold Sellon, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

My Commission Expires : January 6, 1975.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

Come now Albert Wall and Pearle Wall, who being first duly sworn, depose and say as follows: That we reside on a farmstead located in Section Twenty-five (25), Township 145 North, Range 79 West, and operate a combination grain and livestock farm. We own a total of one thousand one hundred twenty (1,120) acres and rent an additional three hundred twenty (320) acres in our farming unit. The basic farming unit that we own consists of eight hundred eighty-one (881) contiguous acres and it is through this area that the McClusky Canal will

divide our property. This land has been the subject of condemnation proceedings and the matter is presently pending in Federal District Court.

We were never contacted by an appraiser from the Federal Government so we had no opportunity to discuss with him the situation that our farm is in and we did not go over the effect that the canal would have upon our farming operations. An opportunity was never given to us to meet with this appraiser. In February of 1972 a negotiator whose first name was Jerry stopped by the farm on a Wednesday afternoon when Mr. Albert Wall and the rest of the family were gone. He did speak with Mrs. Wall who informed him that she did not wish to look at the papers that he had and would prefer that he return at a time when the rest of the family was home. He then left the farmstead and returned the next Friday which was two days later. On that day all of the men were again gone and he only found Mrs. Wall home. At that time she again indicated that she did not wish to discuss his material with him and he then indicated that he would not be back anymore to bother them. At no time during any of these visits did he actually indicate the purposes of his visit nor did he do anything more than identify himself as a negotiator.

It was then during the first part of March that we were served with the condemnation papers. At that time we still had not been shown maps nor did we have any actual information to indicate the location that the canal right-of-way was going to take through our farmland. We then drove to Bismarck to meet with Bureau officials to try and determine the exact location that the canal was going to take through our farmland.

We were then furnished the maps, copies of which I have attached hereto and made a part hereof, which show the route that the canal will follow through our property. At that time we asked the Bureau officials that we were talking to if there were any alternative routes considered and also why they had determined to follow the route through our farm. He then advised me that there were several other routes considered but that this route which was selected was chosen because it could use a natural flow for the water instead of having to use pumping or other types of methods to get over some of the hilly areas that exist to the north of our area.

One of our objections to following this route through our farm is that in the process of doing so they destroy six excellent slough or marsh areas that existed in our pastures and which served as excellent areas for ducks and other forms of wildlife. In addition, a lake known as Heckers Lake lies on a portion of our property and this lake also will be destroyed by the canal.

A total of forty-three thousand one hundred dollars (\$43,100.00) has been deposited in court as part of the condemnation proceedings. We do not feel that the government is acting correctly in initiating condemnation proceedings without having made a real effort to negotiate this matter with us. At no time did any government official call before coming to the farm and indicate that they wished to meet with us to discuss this matter and the effect that it would have upon our farm. The farm that we are left with is substantially destroyed as far as having any continuing value as a farm to us. The farmstead is completely severed from the bulk of our land and we will now have to travel approximately nine and a half or ten miles to reach our pasture land. This is the same pasture land that previously was connected directly with our farmstead and the barns and hay storage area. It is therefore our position that we should be considered as having been dislocated by this project. The Bureau however has made a determination that they do not think we are dislocated and have not made any efforts to give whatever rights we would be entitled to and considerations we would be entitled to as a dislocated family.

ALBERT WALL,
PEARLE WALL.

On this 22nd day of September, 1972, before me personally appeared Albert Wall and Pearle Wall, known to me to be the persons who are described in and who executed the within instrument and acknowledged to me that they executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires: January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

Comes now Mr. Ben Schatz, being first duly sworn, deposes and says as follows: That I am the owner and operator of a combination grain and livestock farm located in Burleigh County, North Dakota, in the Northwest Quarter (NW¼) of Section Eight (8), Township 144 North, Range 78 West, consisting of a total of Seven hundred twenty (720) acres. Attached hereto and made a part of this affidavit is a map of my farm and also a map showing the areas that have been condemned by the United States Department of Interior for right-of-way purposes for the McClusky Canal and also showing the area running through my property that was condemned for public road use.

The appraiser who originally set the governments valuation for my land did not contact me nor give me an opportunity to familiarize him with my farm. There was an individual who stopped and asked if he could measure some of the buildings on my farm and I gave him permission to do so but he did not indicate what his purpose was nor did he enter into any kind of a discussion with me to try and determine any information about my farm which might have been useful to the government in arriving at a fair appraisal of my total farm and also a fair appraisal of the land that the government wished to condemn. I was notified that the government wanted to purchase and was going to condemn a total of approximately eight-one (81) acres of my land and they made a first and only offer of a total of ten thousands one hundred fifty (\$10,150.00) for the two parcels of land that were going to be condemned. I considered this to be totally inadequate in view of the fact that they were separating my farmstead from a good share of my pasture and were also leaving me with 56.36 acres of land that was isolated between the canal right-of-way and the road right-of-way. In an effort to try and make this fifty-six acres usable I requested that a livestock underpass be constructed under the road so that the land north of the road would be connected with the land south of the road. I was informed by a Bureau official that this would be too costly and they refused to put in such a structure on the road.

While the canal was being constructed it became apparent that I was going to have a problem on my farmstead with the drainage of my barnyard runoff and also with the existing drainage system for my sewer system. The Bureau solved these problems by merely constructing drains which would allow my sewage as well as the runoff from my barnyard to run into the canal. At the time this was done I expressed concern that there may later be objections to this and that I might be forced to an additional expense of handling these problems in some other manner so that they did not flow into the canal, but they assured me that this was alright. I find this to be a little bit difficult to understand when Bureau officials continually assert that they are concerned about the ecological effect of this project and are not going to destroy anything which is not replaced in some other manner.

I also objected to the placement of the road away from the canal right-of-way in the manner in which they have done. I rather requested that they continue to follow the canal right-of-way with the public road so that it would not be as much of a problem to my remaining farming operations. They indicated however that because of the topography of the land immediately south of the canal right-of-way it would be impossible for them to construct the road. My visual observation does not show why this should have been such a great problem and it remains a situation which I simply cannot understand.

I further object to the arrogant attitude that the Bureau officials had when they approached me. My understanding was that the law required them to enter into good faith negotiations with me. Their approach was that they made the initial offer which I have mentioned above and said I could either take that offer or they would condemn my property. I then informed them that if that was my choice they could condemn because I did not feel that they were any way near what my property was worth. At that point and thereafter they did not make any effort to enter into good faith negotiations with me to try and settle all of my problems which were involved in the governments acquisition of my land.

Another thing that I find very objectionable is the fact that the Bureau will not acknowledge that they have cut off my use of the pasture to the north of my farmstead as well. Prior to the Bureau's condemnation of this property and the construction of the canal I had access to and use of a livestock underpass to

the north pasture. The Bureau takes the position that I still have use of this livestock underpass however the fact is that they have fenced off this area so that it is not accessible to my barnyard at the present time. I am able to make limited use of this by using the ditch of the roadway as access to the underpass for a period of about one hundred (100) yards but this is a situation that the County Highway officials may make me stop in the near future. The reason for this is that I have to construct a fence along the shoulder of the road to keep my cattle in the ditch and this fence may interfere with traffic traveling on the highway.

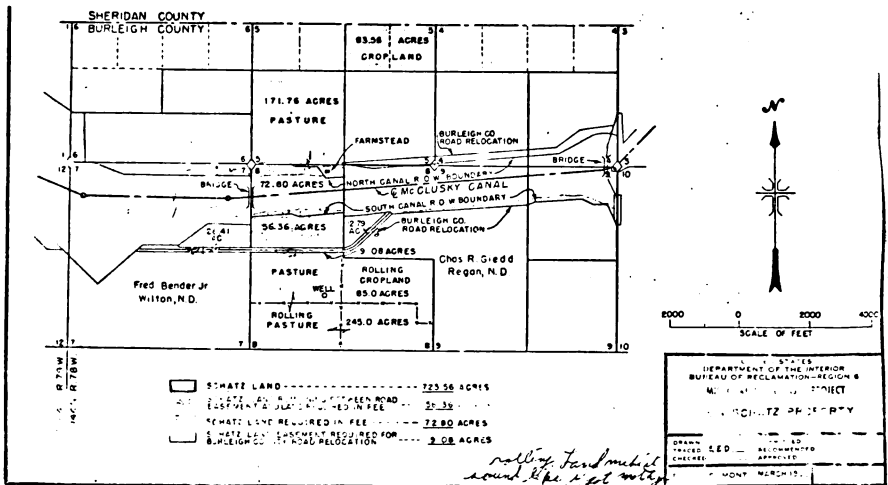
My final objection to this entire situation is the fact that after all the construction is done and the water is running through my former farm, I will not receive any benefits at all from the water that comes through the area but will have only had to suffer the loss that is imposed upon me by the loss of part of my farming unit.

BEN SCHATZ.

On this 22nd day of September, 1972, before me personally appeared Ben Schatz, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires: January 6, 1975.



AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, K. E. Peck, being first duly sworn, depose and say as follows: That I was the owner of a grain farm located in Township 147 North, Range 82 West, consisting of a total of 292 acres. My farmstead is located in the Northeast Quarter (NE $\frac{1}{4}$) of Section 24 of said township. The McClusky Canal passes through my property immediately north of my farmstead and in addition to the canal right-of-way, the remainder of my property has been purchased by the government for wildlife purposes and also for the purposes of excavating clay from the premises which will be used to line the canal so that it will not lose so much water in other areas along the canal route where land that it passes through consists of gravel and more porous types of material that would lose water if not lined with clay. The original agreement for the purchase of my land was entered into the government by myself on July 7, 1971. At that time, I expected that the matter would be reviewed by the government and I would thereafter receive my money on or about the 9th of July. After I had signed all the necessary documents and entered into the agreement with the government to purchase all of my farm, I assumed the government would let me know as soon as

they were ready to pay for the farm and would also let me know if there were any particular problems that they discovered regarding the purchase of my property. I did not hear anything further from the government until February of 1972, at which time they informed me that there was a claim against my land that would have to be settled before they would pay me for it. At that time, I inquired as to why it took so terribly long for them to inform me about the fact that this claim would have to be settled. At that time, no one denied that this was not a matter that they had known about for a substantial period of time. I then proceeded to have an attorney in this area settle the matters that they had pointed out. This matter was then settled shortly after the middle of June and it was not until the 7th of July of 1972 that I actually received my money.

Even though I had not received any of the money that I was entitled to during the spring of 1972, the government denied to me the use of approximately 80 acres of land that they indicated would be needed for canal construction purposes this summer. In fact, the bulk of that land has not been used at all for canal construction purposes and could have been used by my tenants for crop purposes. I feel that in view of the fact that I had not been paid for the property, that I am now entitled to some additional compensation in the form of interest on the purchase price or rent on the land as I should have been allowed to either get my money or draw interest on it or to continue cropping my farm until I was paid for it. Also, I feel the Bureau has been extremely negligent in their land management practices. They allowed 40 acres of my property that is going to be used for these clay pits to grow up into large weeds and have allowed those weeds to go to seed. This has now created a hazard for the remaining portions of my land that they will allow to be continued to be cropped until wildlife wants to take them over as well as creating a real weed hazard for my neighbors surrounding these weed-infested areas. It seems to me the least the Bureau could have done if they were not going to allow my tenants to crop this property, was to manage the land in such a way that they would at least have controlled the weeds during the summer growing period.

Finally, I had been assured that the government would pay all my additional legal expenses in order to clear up title to convey premises to the government. I have not been informed as to this date whether or not the government will actually pay these expenses, however, I am very worried in view of the fact that my neighbor had a similar situation in which he had to incur additional legal expenses and he had to go through some problems before he could get the government to live up to their obligation to pay these additional legal expenses.

K. E. PECK.

On this 22nd day of September, 1972, before me personally appeared K. E. Peck, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires: January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, Richard Nathan, being first duly sworn, depose and say as follows: That I am the owner and operator of a combination grain and livestock farm, the headquarters of which is located in the Northeast Quarter (NE $\frac{1}{4}$) of Section Seven (7), Township 147 North, Range 81 West, in McLean County, North Dakota. I carry on my farming operations in partnership with my brother, Herbert Nathan. Herbert Nathan and myself own one quarter of land, a portion of which has been used for McClusky Canal right-of-way purposes.

Through negotiations a settlement was reached for the sale price of my interest in this property to the Bureau of Reclamation for canal right-of-way purposes. The contract for this was signed on December 8, 1971. At that time I was concerned as to how long I would have to wait to receive the money that I was entitled to out of this agreement. The negotiator who was dealing with me, Mr. Richards, indicated that it would be about 90 days however he refused to put this into writing at that time.

Thereafter when the money did not come my brother and I made inquiry as to what was holding up our being paid. At that time we were informed that there were certain title problems involving some of Herbert's other property that was also involved in the canal right-of-way which had to be cleared up and these matters were set out. I then inquired as to whether or not there were any title problems involving the property that I had an interest in and was informed that there were no problems at all. I then asked why I couldn't receive my money and was informed by Mr. Burgum of the Bureau of Reclamation office in Bismarck that I would not be able to receive my money until my brother's title problems were cleared up. At that time I indicated that I could not see what relationship his problems would have to my being entitled to my money as soon as it was available.

On about the 20th of May of 1972 Herbert and myself decided that we would have to take stronger actions in order to try and get the money that we were entitled to. At that time we informed the Bureau that it could not enter upon our land and proceed with construction on it until we had received our money. We were shortly thereafter contacted by Mr. Burgum from the Bureau office in Bismarck as well as Mr. Anthony from the U.S. attorney's office in Fargo and a Mr. Fischer from the Bureau of Reclamation office in Billings, Montana, in an attempt to settle our differences. When they contacted me they again stated that there was no problems involving my title to the property and assured me that I would be receiving my money within about two weeks. In fact I did not receive my money until on or about July 18th or 19th which was about one week after Herbert had received his money.

Now that the matter has been closed I would have the following observations and objections regarding the Bureau's Land Acquisition policies: The negotiator that they send out does not seem to be fully aware of what authority he does have and he would have to go to Bismarck every time we would attempt to negotiate some items that would be related to the acquisition of their property from us. It also seems that when you attempt to get some of these questions answered you are referred from one person to another and in the end you end up never getting these questions resolved because there does not seem to be anyone who really knows what the answer is or who is willing to take on the responsibility to find out what the answer is and give it to you.

While a settlement was reached with me for the land that will be involved in the canal right-of-way I feel that it is not fair that I was not entitled to receive any compensation for the great deal of inconvenience and trouble that the construction of this canal is going to cause to my entire farming operations. Whereas in the past the property that my brother and I farm south of the Canal has been readily accessible from our farmsteads with a minimum of delay and inconvenience, we now find that it will be necessary for us to travel in excess of five miles to reach some of it unless we go to the personal expense of constructing new roads to get to these areas. Also, I do not feel that it is right that the landowners in this area have to put up with all of the inconvenience and expense that this project is going to cause to them and will not have the right to take any water from the project.

RICHARD NATHAN.

STATE OF NORTH DAKOTA,
County of Towner, ss:

On this 22nd day of September, 1972, before me personally appeared Richard Nathan, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires : January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, Herbert Nathan, being first duly sworn, depose and say as follows: That my address is Cole Harbor, North Dakota; that I am the owner and operator of a combination grain and livestock farm located in Section Eighteen (18), Township 147 North, Range 81 West, in McLean County, North Dakota. The McClusky

Canal intersects my property at a point immediately south of my farmstead and altogether takes 100 acres of my real estate for canal right-of-way purposes, road purposes and wildlife purposes.

In August of 1970 I was contacted by an appraiser from the Bureau of Reclamation. He indicated to me that he wanted to appraise the property that the Bureau was going to acquire for the McClusky Canal and related activities to it. At that time I questioned whether or not he was a qualified appraiser to appraise my land in view of the fact that he appeared to be very young and he indicated that he was originally from Mandan and that his only farming experiences were trips to his grandparents farm while he was growing up. He further indicated that he was a liberal arts graduate from Bismarck Junior College and that he had been hired by the Bureau shortly before this as an appraiser. He further said that this was his first job.

Thereafter I was contacted by a negotiator named Mr. Harold Atwood on or about May 24, 1971. My experiences with him indicated that he had very limited authority and he did not actually seem to be aware of the authority that he did actually have. Every time that I would raise a question as to how the acquisition of my property would affect me and what arrangements could be made to minimize the effect of the project upon me he would have to go to Bismarck and find out what authority he actually did have.

In the end I did make an agreement with the Bureau through Mr. Atwood regarding the sale of the land that they desired for right-of-way purposes. At that time I was a little skeptical however because there were many things which I had raised questions about which they indicated that they either could not inform me of what the status was, such as the amount of severance damages and there were other things which they said they would take care of but that they could not be put in writing such as when I would receive my money and the manner in which I could maintain access to my pasture which is located north of my farmstead. This became a problem because of the fact that the existing section line is destroyed by the canal and the Bureau constructed a new road which runs north of my barn and farmstead and between the pasture located immediately north of the road. At the time that an agreement was made for the sale of my land I was assured that cattle guards would be installed on this road so that I could have access to the pasture to the north. It then developed that the township supervisors objected to this arrangement and said that the cattle would pose a traffic hazard to this road so it was therefore impossible for the Bureau to carry out this agreement. This determination was made in March of 1972 and since then I have been unable to determine what arrangements the Bureau will make that are agreeable with the township supervisors so that I may maintain access to my pasture north of the road. I suggested that they construct an underpass through the road so that my livestock could freely move from the barnyard area up to the pasture however they then indicated that this was not a feasible alternative. They then suggested that they construct a well for me in the north pasture which would not be nearly as handy for me as things presently exist but which would be adequate to at least take care of the watering needs of my livestock during the summer months when they use this pasture. However at that time I informed them that there was much more to the construction of a well than merely drilling a hole and asked them what arrangement they would make to actually make the well suitable to produce water and be used for the watering of livestock. They then indicated that they hadn't thought about this part of the problem and said that they would have to think about it some more. To date I do not know what is going to be done and my situation is that I will need water in this pasture within a week or two with no arrangements to furnish this need.

I entered into an agreement to sell my land to the Bureau of Reclamation on or about December 8, 1971. At that time the negotiator and the other Bureau officials who I had contacted indicated that I would receive my money within 90 days. As the 90 days period began to pass I became concerned when I had not heard anything further from the Bureau indicating when I would receive the money. I then contacted Bureau officials in Bismarck and at that time was told that I had not received my money because of the fact that there was an unsatisfied mortgage on part of the property being acquired from me. In my conversation with them it became apparent that this was a flaw that they actually knew about two or three years prior to this time but no one had taken the responsibility to inform me of the fact that this was something that they would require to be satisfied before I would get the money. I pointed this fact out to

them at that time and told them I did not feel that it should be my responsibility to continually run after them in order to get this matter closed. I then made arrangements to get this old mortgage satisfied which upon consulting with my attorney I found that in his opinion it was a matter that actually could have been waived by the Bureau in view of the fact that it was a very old mortgage and under North Dakota law would no longer be binding upon the property anyhow. After this was done I still did not receive my money so finally had to make another trip to Bismarck at which time I was informed that they had rechecked my records and brought them up-to-date and that they now found that there was a judgment against me which would have to be satisfied. At that time I again objected to the way the Bureau was handling this matter as it seemed to me that this was a matter which they could have found out shortly after entering into the agreement with me on December 8 so that I could have made arrangements to have that cleared right away too. I then proceeded to have this matter taken care of, which as I recall was completed towards the end of April, 1972. I then still did not receive my money so again contacted the Bureau and was then informed that in addition to the other flaws, they had found an easement for the removal of rocks from my property which they considered to be another flaw in my title and would require some curative action to allow them to release the money that I was entitled to. Again it seemed to me that this was a matter that they should have been able to have informed me of at the time the agreement was made to purchase my land but instead they did not inform me of it until so much time had elapsed and then only because I was continually pushing them to get the matter closed. The flaw created by this easement was then cleared on or about June 15, 1972. I again did not receive my money until on or about July 10, 1972. During this period of time when I was trying to get my money it became apparent to me that the only way that you can get any kind of a response out of the Bureau of Reclamation is by fighting them and pushing them just as much as I possibly could. I had previously tried cooperating with the Bureau and the results I received were apparent. They were going to sit around and do nothing if I was willing to cooperate and be quiet. I therefore decided that the only alternative that I had was to refuse access to the contractor unto the property that the Bureau wanted from me until I had actually been paid for it. The Bureau officials indicated that I had no legal right to do this however I in turn informed them that I did not feel they had any legal claim to my property in view of the fact that they had not paid me one penny for it. I did not feel that any of the agreements that I had signed were actually binding until I had received the money that they said I was entitled to. It was because of this fact that I also went ahead and seeded crop unto the land that the Bureau was going to acquire from me in the spring of 1972.

The agreement that I entered into with the Bureau for the purchase of my property provided that the Bureau would pay all closing expenses and legal expenses necessary to clear title. Because of the matters that came up, the legal expenses involved in clearing my title became quite substantial. A bill for this was then submitted by my attorney to the Bureau and they in turn refused to pay this bill. I then had to go to the trouble of working this matter out with the Bureau as well as the other problems that I had been having and finally got them to admit that the bill was their responsibility and that they would pay it. This was not accomplished however until after I had had more than a two hour discussion with Bureau officials from Billings, Montana, as well as Bismarck.

I am now having a great deal of trouble trying to find out what status the claim that I have filed for the loss of the crop that I planted in 1972 that was destroyed by the construction personnel when they entered upon my property. Based upon my past experiences I know that if I do not again force the issue with the Bureau it will be a matter which they will simply ignore and eventually I will simply have to abandon my claim against the government. This is just another example of the way private landowners are forced to take extreme positions with the Bureau in order to get what they are rightfully entitled to.

Some general objections that I have to the manner in which the Bureau is operating in this area is the fact that they have allowed weeds to grow up along the right-of-way and other property that they have acquired for canal construction purposes without making any attempt to control them. These weeds have now gone to seed and will be a menace to myself and other adjoining landowners for the 1973 crop season.

In conclusion all I can say is that if I had known it was going to be so much trouble to deal with the Bureau I would advise them to not even try to compensate as they do not give any cooperation to the landowners who do but rather fight them in every way possible.

HERBERT NATHAN.

On this 22nd day of September, 1972, before me personally appeared Herbert Nathan, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires: January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, Albert Klain, being first duly sworn, depose and say as follows: That I am the operator of a combination grain and livestock farm, the headquarters of which is located in Section Four (4), Township 147 North, Range 81 West, in McLean County, North Dakota. The land which I farm is located both to the north and to the south of my farmstead. I own two quarters of land described as the South Half (S $\frac{1}{2}$) of Section Sixteen (16), Township 147 North, Range 81 West, and it is through this property that the McClusky Canal will run. My land has now been condemned by the Bureau of Reclamation as I was served with papers condemning the property on August 15, 1972.

My experiences with the Bureau have been one set of frustrations after another. It's been several years ago that I became aware that there was a possibility that my property would be used for the McClusky Canal right-of-way purposes. During these early years I attempted to cooperate with the Bureau by allowing them to do what surveying they wanted to on my premises which they freely did. In one instance they drove across newly seeded land and certainly did not do the crop that I had seeded on this land any good. On another occasion they drove across grain which I had swathed and had not combined yet.

Some time during 1968 I do recall an appraiser stopping by the farmstead and asking if he could look at some of the buildings around the farm. I recall his taking pictures of an old barn located on the farm as well as a manure pile that I had not disposed of and he also measured the farm house located on our farm. I then asked him if he wished to have me accompany him to the land that was going to be used for the McClusky Canal but he told me he had already seen it and that he did not intend to go back there. At that time I tried to determine if he would be willing to go over my farming operation so he could understand how the land that was going to be eventually used for the McClusky Canal fit into my total farming operations but he seemed to express no interest in this.

It was not until I received a letter from the United States Department of Interior dated December 13, 1971, that I learned that the Bureau of Reclamation was actually intending to proceed with the McClusky Canal project and that my property was definitely going to be used for right-of-way purposes for that project. This letter that I received indicated that I had been contacted by negotiators and that the Bureau was unable to reach an agreement with me for the acquisition of my property. I had not been contacted by any negotiators prior to the receipt of that letter and I did not understand the basis for that statement. It was shortly thereafter that a man by the name of Mr. Richards briefly stopped by my farm and said he was passing by and that he was the negotiator who would be dealing with me on the acquisition of my land for the canal right-of-way purposes. He only stopped for five minutes and said that he was doing so to get acquainted but that he would be back to go over this in more detail with me.

He did return a second time and offered me approximately six hundred dollars (\$600.00) more than what was offered in the letter of December 13.

I have the following objections to the Bureau's appraisal and negotiating procedures: My own observations are that the Bureau is using very outdated appraisals which possibly have been merely updated as to the normal percent-

age increase in value of land that is experienced nationally. It would appear that the appraisal that was used as a basis for the valuation of my real estate is a 1968 value. It further appears that the appraiser comes in and bases his appraisal strictly upon the observations that he makes of the physical location and appearance of your farming operations. I know that he made no efforts to determine for his own information the manner in which I operate my total farming operations in the way that the land that the Bureau was going to be acquiring from me fit into my total farming operations. As far as I know he made no effort to determine that the land that the Bureau is acquiring from me is some of my best farm land and in fact adds a great deal to the value of some of the other land that I own which is lighter and not as productive.

In addition it was totally impossible to determine the amount that the Bureau was actually offering for my farm land when they were negotiating with me as they continually refused to indicate the amount that they were allocating to severance damages and the amount that they were allocating for the actual value of my land. The amount that they offered me was actually inadequate to replace the land that I was actually losing at the prevailing market prices let alone even beginning to compensate me for the loss in value to my entire farming operations by the loss of this property.

Finally the last straw was when I went to look at my property which is the subject of the condemnation proceedings last spring. I found that the Bureau had puts takes all over it, both steel and wooden stakes, and that they had also unloaded several loads of fencing material on the property and it was in such a condition that it was unable for me to farm it without risking the loss of all the tires on my equipment and tractors. This was done prior to any actual actions to condemn my property. At that time I tried to determine what the Bureau's intentions were regarding my land and was told that they intended to use it for canal right-of-way. I told the Bureau officials and construction personnel in the area of my farmland that it had not been condemned and that they had no business to be doing any of these things on my property until they did condemn it. I contacted Mr. Bastein and also discussed this with Mr. Cleaver who is a negotiator dealing with some of the other landowners in this area and also an attorney from Billings, Montana, who was with the Bureau of Reclamation. They all urged me to not farm this property or destroy all of the surveying work that had been done on it and assured me that I would be compensated for loss of crops for this crop year due to the fact that they actually had not condemned the property. Again I accepted the word of these government officials only to find upon inquiry at the Bismarck office of the Department of Interior that they were not aware of any means available for me to claim reimbursement for my losses and they made no efforts to try and find some way for me to be paid for this loss of the use of my property. In addition I had been assured by my negotiator that I would be compensated for the summerfallow that was left on the property that would be acquired from me at the time it was acquired but now I find that I am not going to be compensated for this either.

Because of all these actions on the part of the Bureau of Reclamation I have now decided that I will refuse them access to my property even though they claim that they now own it because of the initiation of the condemnation proceedings. I feel that there are certain property interest that I still have in this that they have not made provisions to adequately compensate me for and until I am informed as to how these interests are going to be paid for and these damages settled I am simply going to refuse them entry upon my land with whatever lawful means I have available.

One of the things that I saw the construction personnel who were working on this project do that just made me sick as a lifelong farmer is that fact that they are taking the black dirt that is one of our most important natural resources in the world and covering this up with the subsoil, totally destroying it for any future use hereafter. I feel that such action is totally indefensible as I am sure the day is going to come when we are going to find that when nothing else is left that remaining black dirt and topsoil that we have is going to become a priceless commodity.

A final example of the way that the Bureau treats land owners is the fact that I notified the construction personnel and the Bureau personnel that they had no business entering upon my land with any fencing material or beginning to construct any fences because of the fact that it had not actually been condemned. Very soon after I had informed all the personnel that were in the

area of my land who were concerned with it of this fact they proceeded to unload a great deal of fencing material and actually begin construction of the fence against my explicit orders to them and without any authority to proceed. All of this has led me to the observation that whatever the outcome of my personal situation is, if anyone asks me for advice as to what they should do when the Bureau of Reclamation begins planning a project which will affect a land-owner I would simply say to refuse to cooperate with them at all in the early planning stages because in the end it is not going to do you a bit of good in that they will still end up treating you in an arbitrary inconsiderate manner and will not take the individual land owner's problems into concern at all when they begin the actual construction of the project.

ALBERT KLAIN.

On this 22nd day of September, 1972, before me personally appeared Albert Klain, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires : January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, Kenneth Grabinger, being first duly sworn, depose and say as follows: That I am the owner and operator of a combination grain and livestock farm, located in Section nineteen (19), Township 146 North, Range 80 West in McLean County, North Dakota. I carry on my farming operations in cooperation with my father, who farms northwest of my farm. The McClusky Canal passes through my property in the northeast quarter (NE $\frac{1}{4}$) of Section 20, Township 146 North, Range 80 West. The Canal right-of-way and wildlife land that will be taken on that quarter amounts to approximately 52 acres. In addition thereto, the government is taking a total of approximately 138 acres of my property located along the east side of the South half (S $\frac{1}{2}$) of Section 19, in Township 146 North, Range 80 West. When representatives of the Bureau of Reclamation contacted me to acquire this property, I immediately attempted to negotiate with them to sell the amount of land that is needed for the canal right-of-way at the present time, and to maintain the ownership of my property that will eventually be needed according to present plans for wildlife purposes until the wildlife aspects of this project are actually going to be developed. While I have not been told how long a period of time it will be before this wildlife property will actually be developed for wildlife purposes, all indications are that they may be several years in the future. The negotiator who dealt with me was named Don Richards. On several occasions, he attempted to determine if he could negotiate with me on the basis of separating the canal right-of-way and the wildlife right-of-way, but always came back to me with the answer that he could not negotiate on the basis of my retaining ownership in the areas needed for wildlife purposes in the future, but would rather have to negotiate on the basis of obtaining the entire amount of property that the government plans to think they will eventually need for both wildlife and canal purposes at the present time.

Prior to being contacted by the negotiator, I was contacted by an appraiser. At that time, I found that the government was proposing to leave a 20 rod strip along the west side of the south half (S $\frac{1}{2}$) of Section 19 and would then have the east property line of their wildlife land run very near the edge of my farmstead. Both the appraiser and myself agreed that there was no real need to leave that 20 acres and to run the line for the east edge of the wildlife right-of-way so near my farmstead, and instead it was agreed that the wildlife could just as well take that 20 acres located on the west side of my land and leave an additional 20 rod strip on the east side of the original proposed wildlife right-of-way. Upon thinking it over, this adjustment by the government shows that they really aren't as concerned about getting land that is best suited for wildlife purposes but rather are concerned about getting a total number of acres related to the McClusky Canal project devoted to wildlife purposes so that their records will be complete and appear to be balanced in this respect.

In view of the fact that I could not get any satisfaction from the government in negotiating on the canal right-of-way and wildlife property separately, and

also because of the fact that I could not get any of my questions answered as to the amount that they were offering for the land they were actually taking from me and he amount that they were offering for severance damages, I decided I had no alternative but to have my property be condemned by the government. I now find that the government has in some occasions negotiated with individual land owners who had a similar situation to mine, so that they did buy the canal right-of-way now and will negotiate with these land owners at a later date for the purchase of wildlife area. In fact, I am familiar with two examples of this, one of which was a situation where the landowner concerned was able to convince the Bureau of Reclamation to allow him to keep his land for wildlife purposes eventually and another situation where the landowner had to enter into negotiations with the government to get them to purchase the land they would eventually take from him for wildlife purposes at the same time they were purchasing his land needed for canal right-of-way purposes. I feel the government should be under a very strict obligation to not only enter into honest, meaningful negotiations with all landowners concerned, but to also have these policies for negotiations be uniformly applied. I feel as though I am at a very great disadvantage in having to give up my wildlife land at the present time as those who have been allowed to retain the same are being allowed to enjoy the appreciation that is bound to accrue to this land during the additional period of time that will elapse until it is eventually taken by the government.

In addition, when I lose this property and because of the fact that I was not able to get any assurances as to how long I would be able to continue to use the pasture, that is substantially what I use the approximately 140 acres in Section 19 for, it would put my livestock enterprise in a very unstable position and possibly even make it difficult for me to continue to maintain the financing which is necessary for a young farmer like myself to have in order to continue operations. None of these things, however, seemed to have any effect on the Bureau officials as my negotiator would attempt to get answers for me on them, but would come back and say he could not get any for me.

One final objection that I have is that I would think at least myself as a young farmer in the area of the McClusky Canal could be given the opportunity to use some water from the canal for irrigation or other purposes so that I could partially compensate myself for the loss of my farm premises. However, at the present time, I have absolutely no right to obtain any water from the canal and all indications that I have heard so far indicate that there is very little chance of obtaining any water rights from the canal in this area in the future. It also appears that there are going to be very limited number of bridges placed across the canal so that the established patterns of transportation in my area are going to be severely disrupted. An individual such as myself who desires to continue farming in this area will be forced to try to purchase new land to replace the amount that I am losing. This disruption in the local transportation is simply going to make it even more inconvenient for me to find additional land which will fit into my existing farming operations, because it will cut up the established roads to such an extent that land that may not be located too far from me may end up being several miles traveling distance from my farmstead.

On more than one occasion, I asked my negotiator if the government was making any efforts to assist individuals such as myself who are losing a substantial amount of property and obtaining additional replacement property. He indicated that the government had no such programs action for this particular project. This is another area which I feel would be a very reasonable request on the landowners concerned to ask that the government either furnish some assistance in securing some replacement land or make an additional allowance so that I can be compensated for the additional real estate agent fees that will be necessary for me to incur in order to locate additional property.

KENNETH GRABINGER.

On this 22nd day of September, 1972, before me personally appeared Kenneth Grabinger, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N. Dak.

My Commission Expires: January 6, 1975.

AFFIDAVIT

STATE OF NORTH DAKOTA,
County of McLean, ss:

I, Alvin Grabinger, being first duly sworn, depose and say as follows: That I am the owner and operator of a combination grain and livestock farm, the headquarters of which is located in Section eleven (11), Township 147 North, Range 81 West. I rent a total of 800 acres in one parcel located immediately around my farmstead, and also rent an additional three hundred twenty acres of pastureland immediately adjacent to my home premises as well as rent another section of land immediately south of my farmstead which I rent. The McClusky Canal intersects my property in two separate areas and also divides the section of land that I rent. The canal takes approximately 86 acres of the land that I own and I will be losing a total of 60 acres of the pastureland that I rent. In addition, a total of 72 acres of the section of land that I rent has been taken for the canal right-of-way purposes.

I entered into a negotiated settlement with the Bureau of Reclamation for the purchase of the land that I owned. The negotiator that dealt with me was an individual by the name of Atwood who I feel made an honest effort to get answers for the many questions that I raised regarding the proposed project and the impact that it would have upon me. He was however, very unsuccessful in getting these answers for me and in the end about the only thing that I had to go on to induce me to make a settlement with the government was to consider the price that they were offering me for my land and to also consider the inconvenience and my own desire to avoid going to court to have the government condemn my property. At no time was I able to determine the amount that the government was going to pay for the property that they were taking, and then find the amount that they were going to offer for severance damages. In my own situation, my severance damages are very substantial because of the fact that the property which I owned that was previously accessible within one quarter mile of my farm buildings will now be located some six miles distance from my farm. The reason for this is that a bridge is not located near my farmstead and it will be necessary for me to travel a total of six miles to reach a portion of my land that previously I could reach by traveling one quarter of a mile. One of the things that the government could have done which I repeatedly pointed out was to simply take additional right-of-way along the north side of the canal so that I could have easier access to the road that has a bridge across the canal upon it.

The canal itself will run within 12 rods of my farmstead. This very much concerns me in view of the fact that the canal is going to carry a large volume of water through it and from all of the plans and from my observation of the construction of the canal, it appears that the banks of the canal are going to be very steep and if any wildlife or livestock or humans should get into the canal, it would be impossible for them to get out of it. This would appear to create a very bad hazard so close to my farmstead in that even though it is going to be fenced, it seems inevitable that there is going to be occasions arising where wildlife will drawn in the canal and very well create offensive problems around the farmstead, not to mention the even greater chance that children around the farm may at some time get through the fenced enclosure and meet with some tragic accident. In some of the readings I have done regarding similar projects of this nature, I understand that canals very similar to this canal have been constructed using different techniques such as enclosed culverts or other engineering techniques as to make them much safer for humans and wildlife. However, from my observations and from what I have been told, it does appear that any of these new techniques are being used on this project.

One additional observation that I have is that there does not appear to me to be any sound engineering reason for the canal to follow the route that it does in the area of my farmstead. For reasons unknown, they have decided to take a route which substantially runs to the north of the established route of the canal, both to the east and to the west of my farmstead, and in questioning the Bureau and other engineering officials about this, they have not been able to give me any substantial reasons as to why this route was necessary. In fact, when I have raised the issue with them, they have not even been able to defend the route that they have chosen. From my own observations from elevation maps and so on in this area, it does not appear that this is the reason for it.

The Bureau of Reclamation negotiated with the owner of the land that I rent immediately to the south of my farmstead and entered into a purchase agreement for the same. At no time during these negotiations did they make arrangements with myself to settle for rights that I had pursuant to my rental agreement with the owner on these premises that were being purchased by the government. This is property that I have farmed for approximately 5 or 6 years, however, I have rented portions of the premises owned by these land owners for approximately 30 or 35 years. My tenancy on this property has been open and notorious and has been readily visible to all persons who have been through this area. My equipment is used to farm the property and it is a well known fact throughout the area that this is property that I farm. In addition to that, the negotiator who dealt with me was aware of the fact that I farmed this section of land. In addition, the negotiator that dealt with these land owners was informed by the owner of the land that I farmed it. Every one who is at all familiar with farm tenancy procedures should be aware of the fact that the tenant on land has certain interests in the land that he rents which must be settled any time he is losing his right to farm that property.

In the spring of 1972, I proceeded to farm this property as I had done in other years, with the landowners consent. He had told me that the government was negotiating to purchase this property, but had not paid him for the property, so he still considered it to be his own land at the time of normal spring planting if by area. Thereafter, during the month of June, when the crops were growing on the property, the contractor came into the area and wanted to have access to this property. I saw that they were about to enter the premises, so I immediately approached the contractor and told him that he could not enter onto the premises until there had been some assurances that my interests in the growing crops on the property would be satisfied. At that time, a Mr. Basten for the Bureau of Reclamation approached me to try to settle the differences between myself and the contractor. I then told him that I would have no objection to the contractor entering upon the land if I could have assurances that claim for damages would be paid. He then made inquiry and came back to me and assured me that my claim for damages would be settled. Shortly thereafter, a representative of the Bureau of Reclamation viewed the premises and determined that the total amount of damages done by the contractor to the crops that I had planted on the premises was \$384.00. This was about June 18th. On that date, I filed a claim for this amount of damages with the Bureau of Reclamation. Then, on or about the 10th of July, I was approached again by a Bureau official and they indicated that the first claim had been filed on the wrong form and asked that I file a new claim. That was the last that I had heard about my claim for damages. After my claim was submitted on the 10th of July, I was contacted several times to determine if I would allow the contractor to have access to the property to begin the actual construction of the canal. At all times, I told the Bureau officials that I would allow the contractor on the land as soon as I could get a definite answer as to whether or not my claim for damages would be allowed. I continued to tell them that I would allow access to the contractor for the premises that I rented if they would only make a determination on this claim. I made it clear to them at all times that I would even accept a "no" answer if that was going to be their final position, and would then be satisfied and would no longer interfere with their access to the property. However, instead of actually ruling upon my claim, I was instead cited into the U.S. District Court to show cause why a restraining order should not be issued against me prohibiting me from interfering with the government's access to this property.

I interpreted this as being a "no" to the claim that I have filed, however, I felt that this action was totally unnecessary as the only thing I wanted was an answer on the claim.

After having gone through all the problems with the Bureau of Reclamation and its inability to answer the questions that all effected landowners should legitimately have as to how the project is going to effect them, I can only say that I am sorry that I settled with the Bureau and wish that instead I would have been as unreasonable with them as I possibly could. At the time I negotiated a settlement with my land, I felt that I would try and be reasonable with them and that hopefully they would deal with me in a fair and reasonable manner. This certainly did not materialize. At first impression, it may appear that my insistence upon a "yes" or "no" answer was an unreasonable request on my part, however, from the information that I could find, it would appear

that it was absolutely necessary that I get the government to act on my claim before I could proceed into civil court to prove my right to damages. From every indication that I have, the government was going to try to avoid making a final determination on this and I would have been left waiting for the government to take an action for an indefinite period of time without having any basis for pursuing my claim further.

ALVIN GRABINGER.

On this 22nd day of September, 1972, before me personally appeared Alvin Grabinger, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.

JAMES R. BRITTON,
Notary Public,
Towner County, N.D.

My Commission Expires : January 6, 1975.

Mr. CLAUSEN. I would like to have you, if you would, work with our counsel to make sure that we have a clear and balanced input in the record itself. I wonder if counsel could work with him on that?

Mr. SHAFER. I would be glad to, Mr. Clausen.

Mr. MELCHER. The gentleman from Kansas.

Mr. SKUBITZ. Good to have you here today. I appreciated very much the latter part of your statement, the material you presented after breakfast. I would like to have a copy of that. It is more agreeable than what you presented today.

May I ask this question, Tom? You are not satisfied with the past practices and policies followed protecting our natural resources.

Is that correct or not?

Would you suggest that the practices followed in the past are right?

Mr. GARRETT. No. I would not.

Mr. SKUBITZ. Now in turn you say this: We applaud the efforts of the subcommittee to develop legislation to assure the proper management and then you turn around and say "But I do not like anything you have done."

Is this correct or not?

Mr. GARRETT. Certainly the subcommittee has done a lot of work.

Mr. SKUBITZ. As far as you are concerned, it has been sort of a useless effort.

Mr. GARRETT. Not at all. I think that this subcommittee is to be praised for the emphasis it has put on grazing, in particular, and the time and the effort it has put in trying to develop formulas for leasing and that sort of thing.

Mr. SKUBITZ. Are you saying this: At the same time there will be no version of this legislation, meaning that there is no version of this legislation being considered that you can support.

Now here we have before us this committee's version and then we have the administration's version, and then we have a bunch of conservationists working with Mr. Seiberling present a third version. And nothing satisfies you.

Now I must say that your organization accused me of being a negative-minded person.

I must admit that I am no expert in this field but I have learned a good deal about it. But I have not learned anything from your organization with respect to this legislation.

Now you think it would be fair if I asked that you take all three bills and that you come forth and tell us what is right and wrong and make some recommendations as to what you think the Friends of the Earth think ought to be done in this case.

Mr. GARRETT. To be quite honest, Mr. Skubitz, I have been fooling around with writing a bill myself. That is, writing in certain sections. But unfortunately, I am not done with it yet but I certainly intend to bring these suggestions before this subcommittee.

Mr. SKUBITZ. What I am saying is that we have three different versions. Nobody is satisfied with what we have offered. Three groups have gotten together now and they have made the study and they have come to work with the legislation and the Friends of the Earth say, "We don't care for any of them."

Now do you expect us to sit here and wait and keep presenting views?

Mr. GARRETT. No, I am sure that Congress is not going to wait on our organization indefinitely.

Mr. SKUBITZ. I am sure they are not either, but my only criticism is that I think that if you come forth with the criticism you should also come forth with constructive suggestions.

Mr. GARRETT. I do have some suggested language on this. I was going to submit it.

Do you want me to submit it?

Mr. SKUBITZ. I would very much, I would like you very much to do that because I am no authority in this field at all. I would like to have the position of your organization and the sections that you oppose, and how you would change them to make them acceptable. Then your organization would be doing something constructive.

But simply to sit up here and say, "Go back and do your homework and then we will decide another time——"

Mr. GARRETT. Mr. Skubitz, would you like me to go through some suggestions at this time?

Mr. SKUBITZ. I would like you to take these bills, the committee bill No. 1, and come forth with some specific recommendations on the things that you are vitally opposed to and give us language so that we would have that under consideration.

Now the administration has given their views. We have come forth with something and the conservation groups have come forth something, but none of them are satisfied.

Now I think that you ought to come forth with some specific legislation, recommendations, amendments to this legislation so that we can consider them; not simply state that you do not like anything we are doing.

Mr. GARRETT. I do have some language here. I did not read it because—just a moment.

Mr. SKUBITZ. We have a lot of other people here. I am asking you to present it in writing specifically to the committee so that we can have it before us relating to this bill rather than simply stating it here.

Mr. GARRETT. I am fully prepared to do so. As I say, I have some of it right here.

Mr. SKUBITZ. I ask unanimous consent, Mr. Chairman, that Mr. Garrett have several days to prepare his amendments, submit them to the committee for study in writing.

Mr. MELCHER. Without objection, it is so ordered.

[The information referred to follows:]

FRIENDS OF THE EARTH,
Washington, D.C., June 11, 1975.

HON. JOE SKUBITZ,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. SKUBITZ. As you know, the Bureau of Land Management is the result of a shotgun marriage in 1946, between the General Land Office, formed in 1812 and transferred from the Treasury of the newly formed Interior Department in 1849, and the Grazing Service which was formed following passage of the Taylor Grazing Act of 1934.

This union, decreed by Congress, with Senator McCarran of Nevada fingering the trigger of the shotgun, was an unhappy one from the onset. It occurred because the Grazing Service, having become used to deploying seasonal arimes drawn from CCC, had become "uppity." It began with a 79% reduction in Grazing Service personnel, the closure of four regional offices, and has had as a persisting result three decades of stultification of active management of living resources on public lands.

Today we are in a period of historic change, with the BLM's efforts to liberate itself from the paternal repression of Congress evidently nearing fruition. But as this time approaches, many of those who found the BLM noble in adversity, and urged that it be unchained, are taking a second look at the creature that is about to be initiated into bureaucratic adulthood. There is a growing feeling that the BLM has developed an intractably ugly personality, that it is in the process of exchanging domination by western Senators and Congressmen for internal domination by the international oil and mining companies, that those people within the Bureau concerned with preservation and management of living resources will remain subordinate, and that many of the constraints placed upon it earlier may not have been such a bad idea.

We share the unease of our friends in the Wilderness Society and the groups representing stockmen and agricultural interests over what is being now proposed in these Committees. At the core of our apprehension is the question of whether Congress should provide a dowry in the form of an Organic Act, to a union which should probably never have been forced to begin with, namely that of an agency concerned with management of living resources, to one concerned with mineral leasing and other non-living resources. In the current climate there is little doubt which set of concerns will be given priority.

We are convinced that the agencies charged with management of living resources on public lands should be entirely separated from those engaging in energy development, mineral leasing, and other functions related to exploitation of non-living resources.

Our key suggestion, upon which our support of this Organic Act hinges, is that the Act apply only to management of living resources, and exempt all offices and units concerned with energy development and mineral leasing. These latter functions should be assigned to a separate agency. The anlage of such an agency is present in HR. 49, now under consideration by the Public Lands Subcommittee. Perhaps the National Petroleum Reserve Office established in that bill should be expanded to provide for leasing, exploitation and conservation of all energy sources and all minerals.

We suggest that Section 3(b) of HR. 5622 be amended to read "'National Resource Lands' means all lands and interests in lands (including the renewable and living resources thereof) now administered by the Secretary through the Division of Lands, Division of Range, Division of Wildlife, Division of Recreation, and Division of Watershed, hereafter collectively referred to as the Public Resource Lands Service."

We suggest that all reference to activities of components of the BLM concerned with non-renewable resources be stricken from the bill, and that the Secretary be instructed to organize the Public Resource Lands Service under an Assistant Secretary.

Disposal and management of public lands has historically been dominated by two conflicting themes, one attuned to Hamilton's view of an industrial state and the other subserving to Jefferson's vision of an agrarian democracy. A third view, first espoused by John Muir, that some public lands should be pre-

served, received its first really significant expression only during the Administration of Theodore Roosevelt, and has—unfortunately—had a rather limited overall effect on public policy.

The Jeffersonian ideal, distorted by pre-Civil War Politics, exploited by demagogues and by the corrupt, dominated land policies for a century or more. And though the homestead laws left in their wake enormous ecological damage and human suffering, they also left—as Senator Thomas Benton said they would in 1825—“... a race of virtuous and independent farmers, the true supporters of their country, and the stock from which its best defenders must be drawn.”

I believe that the Taylor Grazing Act was really, despite claims to the contrary in three decades of debate preceeding it, an only modestly impure implementation of Jeffersonian ideas. It had as one of its primary goals and effects the protection of incumbent settlers and landowners against absentee livestock owners, such as Senator Stanfield of Oregon who ran 15,000 sheep on free range in the State of Colorado without owning a square foot of land in the state. It aimed to preserve the public lands in order, in part, to achieve rural stability through stabilizing the production of livestock.

The fact that overgrazing and degradation of many public lands has continued is not, in my view, because the Taylor Grazing Act was inherently defective, or because the concept of grazing districts was defective, or even that the decentralized structure first developed by Farrington Carpenter was faulty. It resulted instead, through constant meddling by Congress, often in individual cases and on behalf of individual petitioners. Secretary McKay re-organized the BLM in 1953, into state offices to make such meddling more convenient.

I am convinced that many of the problems attending local control of grazing districts occurred because control was not local enough, but was distorted by the influence of prominent stockmen with their Congressional buddies.

We propose that in writing any new legislation which may supplant, override or re-direct the Taylor Grazing Act, the Committee refocuses the major social purposes of that bill. We believe that any new bill should explicitly state as one of its purposes to promote rural stability and well being, and discourage rural emigration and social dislocation, through stabilizing the production of livestock and through using their means available to ameliorate the effects of highly adverse climatic or market conditions.

We believe that a major stated purpose of any such legislation should be “To discourage the use of public resource lands for agricultural purposes by corporations, other than family corporations formed for the sole purpose of conducting agriculture.”

We believe that the acquisition of ranch lands and farm lands by industrial and agribusiness corporations, usually as speculative investments or as tax shelters, is profoundly against the public interest. We believe that grazing leases should not be automatically re-assigned when ranches change hands, but withheld from such corporations and either re-distributed for the use of incumbent independent landowners, or placed in reserve, perhaps in a kind of “grass bank.”

We believe that any person or corporation either bidding for lands up for disposal, or applying for any lease, license or permit should provide a sworn affidavit listing all real and corporate holdings, and that such affidavits listing all real and corporate holdings, and that such affidavits should be made public record.

We believe that public hearings should be conducted on any application for any lease or permit by any corporation other than a family corporation formed for the sole purpose of conducting agriculture, and that the administrator should, on reasonable request, hold public hearings on any application to determine if granting such application would be consistent with the purpose of the Act.

We believe that the Secretary should not accept bids under bidding procedures established from any corporation except a family corporation formed for the sole purpose of conducting agriculture, except after a public hearing to determine if such sale would be consistent with the purpose of the Act. The Secretary should, in all cases, publish results of bidding under competitive procedures prior to the acceptance of any bid, and should hold a public hearing upon reasonable request.

Mr. Sam Steiger has informed me that such language discriminating against corporations is probably in violation of the “equal protection” provision of the

Constitution. I believe it is far less liable to be in such violation than the landowner consent section of the stripmining bill, and that adequate legal base exists in the stustrata provided by earlier land use and disposal laws.

I hope that the Committee will not become excessively carried away with the term "fair market value" applied to permits and leases. It is an incontrovertible fact that long before the passage of the Taylor Grazing Act, and the withdrawal of lands in the West from homesteading, all but the least valuable land has passed into private ownership. As John Wesley Powell predicted over 100 years ago, practically all the land in the West containing or adjoining water has passed from the public domain. I consider the argument that landowners with animals grazing on public domain are being subsidized, and are thus competing unfairly with livestock raisers who operate on private land, to be rather hollow. Most operations adjoining public land are by definition rather marginal, and always were and still are predicated on the availability of public grazing at limited cost.

In any case, one of the consistent elements in overgrazing is financial instability. In the West today those ranching families which are well established and reasonably secure financially are the least to meet the next loan payment who overstocks. Raising grazing permits and Section 15 leases is liable to have about the same result as rising taxes have had on farming operations throughout the nation—intensification of use leading eventually to disposal. I have no doubt that passage of an Organic Act, written and slanted as this proposed legislation is written and slanted, would have the effect of accelerating the takeover of the West by speculators and big corporations, and hasten the demise of independent ranching operations.

I would urge the Committee to exempt at least the first two hundred animal units per owner from any future raise, and to make a corresponding exemption for Section 15 leases.

We are opposed to any granting of powers of eminent domain to the Bureau of Land Management, not only for condemnation of tracts of land but for condemnation of rights-of-way. The massive misuse and abuse of eminent domain power by the Bureau of Reclamation, and by numerous other federal agencies, have convinced us that such powers must be retrenched rather than increased. As far as road corridors are concerned, there are already far, far too many roads in the West, without providing the BLM a pretext to construct more. The prospect of the BLM using such powers to force roads through Indian lands in Alaska, claiming such routes represented the only feasible access to lands which they administer, cannot be discounted.

The Committee must not plunge into this legislation until it is quite sure that it thoroughly understands all of the implications. There is occurring now a period of re-assessment among groups and interests particularly affected by this issue. The conservation movement, which thought it understood all it needed to understand, is beginning to perceive that it had become entrapped by its own earlier rhetoric. While we may become impatient over a protracted gestation period, I believe that it is better to spend additional time in analysis than to let the internal impetus attaching to this legislation carry us blindly on to a new disaster in public land policy.

The key question again is: Should agencies charged with management of living resources on public lands be entirely separated from those engaging in energy development, mineral leasing, and other functions related to exploitation of non-living resources? I am increasingly convinced that they should.

Respectfully,

TOM GARRETT,
Conservation Director.

Mr. CLAUSEN. Reserving the right to object.

Mr. MELCHER. The gentleman reserves his right.

Mr. CLAUSEN. Would this be—your though being the suggested amendments or an all-encompassing bill?

Mr. SKUBITZ. It makes no difference. If they can come forth with a bill, I would like to see their views, I would like to have that. But if they can live with any one of these bills with certain specific amendments then submit the amendment in writing.

Mr. GARRETT. The reason I did not cite some of the proposed amendments this morning, we were dealing with the committee print and I only saw the committee print yesterday. My amendments were on the proposed bill the conservation group has gotten together section-by-section also based on their reworking the Senate bill.

So all I have to do is get some of this language changed in section 3 of your committee bill and I will be glad to do that.

Mr. SKUBITZ. Thank you.

Mr. MELCHER. The gentleman removes his objection, without unanimous consent it will be accepted.

Thank you very much, Tom. We appreciate your coming before us this morning.

Mr. MELCHER. Now we come to the panel of national conservation organizations. Our spokesman will be Thomas L. Kimball, executive vice president, National Wildlife Federation. He will be accompanied by William E. Towell, executive vice president, American Forestry Association; Daniel A. Poole, president, Wildlife management Institute; John S. Gottschalk, executive vice president, International Association of Game Fish and Conservation Commissioners; Fred G. Evenden, The Wildlife Society; Carl K. Sullivan, Sport Fishing Institute; C. R. Gutermuth, president, National Rifle Association; Westly M. Dixon, president, Boone and Crockett Club; Spencer M. Smith, Citizens Committee on Natural Resources; Cynthia E. Wilson, National Audubon Society; Maitland S. Sharpe, environmental affairs director, Izaak Walton League of America.

This is a very fine panel. We are pleased to have you.

Mr. KIMBALL. Mr. Chairman, I am not sure what the committee's time frame is.

Mr. MELCHER. We are going to take all the time we need to hear from you.

Mr. KIMBALL. I thought, maybe, in order to save time and to give you plenty of time to question us about our presentation, that we might insert our presentation into the record as if read, and devote what time we have left to any questions you may have about our points.

I would be happy to summarize the principal ones if we have time for that.

Mr. MELCHER. Without objection, the entire statement of Mr. Kimball will be made a part of the record at this point.

You may proceed, sir.

[The prepared statement of Thomas L. Kimball follows:]

STATEMENT OF THOMAS L. KIMBALL, EXECUTIVE VICE PRESIDENT, NATIONAL WILDLIFE FEDERATION

Mr. Chairman: I am Thomas L. Kimball, executive vice president of the National Wildlife Federation. I am presenting this statement in behalf of my organization and the American Forestry Association, Citizens Committee on Natural Resources, Boone and Crockett Club, International Association of Game, Fish and Conservation Commissioners, National Rifle Association, National Audubon Society, Sport Fishing Institute, The Wildlife Society, Wildlife Management Institute, and Izaak Walton League of America.

Representatives of some of those organizations are here with me today. Starting on my left (introductions).

A good Organic Act for the Bureau of Land Management is long overdue. We are offering joint testimony today to conserve time, but most importantly, to

demonstrate the solid support within the national conservation and environmental community for legislation to improve public domain resource management. We appreciate the opportunity to be here today.

We will restrict our comments to the more basic provisions of the bills on which there is broad agreement. The individual organizations represented may have additional refinements to offer the Committee in writing before the record is closed. But we all agree on these fundamentals.

Those of us familiar with the public domain have pointed out the inadequate attention and resultant deterioration of those lands and resources for decades. Those concerns have gone unheeded for the most part. Now, two recent publications by BLM document the declining state of those public resources. Those reports, entitled "Effects of Livestock Grazing on Wildlife, Watershed, Recreation and Other Resource Values In Nevada," and "Range Condition Report Prepared for the Senate Committee on Appropriations," mirror what is obvious to any trained observer . . . that much of the public domain is in poor condition and evidently getting worse.

The reports state that only 17 percent of the public grazing land is in satisfactory or better condition as defined by BLM. Eighty-three percent is producing less than its potential. The reports also state that public rangelands will continue to deteriorate by as much as 25 percent in 25 years if the trend is not reversed. Such conditions not only reduce the land's capacity to support livestock, they degrade other equally important resources such as fish and wildlife, recreation, and watershed values. BLM's reports point out that undeniable fact.

Congress and the Administration share responsibility for the deplorable condition of the public domain. Adequate authority, funds, and manpower have not been provided to BLM for its important task. This Committee can give the leadership and direction needed to enhance the many public resources under BLM's care. We urge your earnest efforts and swift action in that regard.

While we are in firm agreement with the Committee's overall objective, we do have serious reservations and some strong objections to parts of Subcommittee Print No. 1.

We firmly believe that the National Forest System should be exempt from the general application of this bill. Previously this Committee has stressed the need for consistency between the Forest Service and BLM. While there will be some differences if the Forest Service is left out of this legislation, they will not be major.

The U.S. Forest Service has adequate authority to manage national forests. It currently is involved in implementing important legislation enacted last year to define program needs and opportunities. BLM's authorities and directives and the Forest Service's program should not be complicated by inter-agency provisions in the BLM Organic Act. Chief John R. McGuire of the U.S. Forest Service detailed reasons why national forests should not be included during recent appearances before this Committee. We believe his position is correct. We recommend removal of the Forest Service from this bill. The Committee should consider amending Forest Service authorities under separate legislation as needed.

Section 202(e) would provide Congress veto power over land use planning decisions affecting 100,000 acres or more when one or more uses are excluded. Section 204 would give Congress veto power over withdrawals for other purposes involving 5,000 or more acres. We have no objection to providing for Congressional review of all withdrawals. We do believe, however, that the veto power is an unnecessary requirement that could restrict BLM's flexibility to properly manage public domain lands. It could provide a forum for continual argument and counter argument among various resource users that could stifle implementation of important public land decisions. Congress can always act its will through legislation. It should, however, maintain its policy making and oversight position and not be involved in the day to day management of public domain lands. We recommend deletion of the veto power.

Section 203(d) contains complex disposal provisions that would benefit state and local governments and adjacent landowners. In our view, that language would make competitive bidding unlikely when so many entities receive preferential treatment. The state, county, city or municipality would have first rights. After that, adjoining landowners, individuals, and others would be considered. The state and local governments already have authority under the Recreation and Public Purposes Act to purchase land at reduced prices. Their

preference rights should be eliminated. We prefer the provisions in H.R. 5622 where competitive bidding would be required except in defined circumstances.

We believe that BLM should be given acquisition authority comparable to that of the U.S. Forest Service. As written in Section 205 of Committee Print No. 1, BLM would have power of eminent domain "only if necessary to secure access" and "only if lands so acquired are confined to as narrow a corridor as is necessary . . ." We recommend that BLM also be permitted such power within the boundaries of the public domain as well as for access. In that regard, we prefer the language in H.R. 5622, which was recently introduced by Congressman Seiberling. Such authority is important in piecing together the patchwork of ownership in many areas of the West.

We strongly support provisions of Section 207 in Committee Print No. 1 for recordings. The need for such records is obvious. We hope the Committee retains that important language.

We are opposed to Section 210, 211, and 212 of Committee Print No. 1 which pertain to grazing. They should be dropped entirely. The existing grazing fee structure and schedule should be maintained. And we have no objection to a legislative mandate to that effect in view of successive Administrations' refusal to implement the program.

The present fee formula was developed in the 1960's with interdepartmental study and public participation. It is a fair and economically sound approach, in our opinion. The public, which owns the public land forage, has not had an opportunity to review the formula proposed in Committee Print No. 1. It is based on a combined index of prices received for beef cattle and for privately owned forage. The price of private forage is determined by many other factors as well as the price of cattle. Such things as property taxes and the competition for land and labor are involved. Furthermore, the formula is questionable because it would base forage costs for sheep on the basis of cattle prices. And the \$2.00 per AUM floor called for could in time be unfair to the permittee should economic conditions worsen sufficiently.

We object to the 10-year mandatory grazing permits which apparently call for automatic renewal. That provision seems to give a permanent *right* in perpetuity to existing grazing permittees if the lands remain available and the permittee complies with all regulations and permit terms. It would confer a right which is not given to any other user of the public lands. We oppose the granting of any private right, title, interest, or estate in the public lands as being contrary to the public interest.

The Forest Service issues 10 year permits and seems to be doing well. However, it is discretionary with the Secretary as to extensions. We have no objections to discretionary 10-year permits as authorized by the Taylor Grazing Act if (1) there is proper management of the land by the permittee and (2) there is an allotment management plan. The BLM report to the Senate on range conditions points up the need to provide BLM needed flexibility to manage grazing use as well as other resource uses. The provision for mandatory 10-year permits with automatic renewal is unacceptable to the conservation community.

We believe that BLM Advisory Boards should be broad-based and multi-resource oriented as directed by the Federal Advisory Committee Act. Such input is essential to proper land management. Continuance of grazing district advisory boards dominated by the livestock industry and establishment of local advisory councils is a duplication of effort which could lead to conflicts between the boards and councils. The livestock industry will be adequately represented on any multiple use advisory board, and we see no reason to continue the grazing district advisory board. We recommend that Section 212 be deleted.

We support the wilderness concept for suitable areas of public domain land. We prefer the language of H.R. 5622 as it pertains to wilderness designation because it would provide better interim protection for study areas. We recommend that the wilderness language in H.R. 5622 be used.

Section 402 of Committee Print No. 1 would increase to 25,000 acres annually the acreage that may be given to a state. As a general principle we believe the public lands should be retained in federal ownership and that disposals should be for specific reasons only. We oppose this provision as written.

Section 502 apparently provides that there multiple-use roads of a higher quality than needed for one-time timber removal are required, the timber buyers would not have to pay costs of meeting the higher standard. The buyers in fact do not pay for the roads at all because stumpage prices are reduced by

BLM to take care of the costs. We want buyers to be required to build roads that meet multiple use purposes and safety requirements. Limiting road construction to that needed for one particular sale could result in a series of unrelated substandard roads which would not support future timber harvests or other uses. We oppose this provision.

Title VI of Subcommittee Print No. 1 repeals a number of outdated land laws. It would postpone the effective date of the repealers for varying time periods. We recommend the laws be repealed immediately to prevent a flood of applications that likely would occur before the law expires. There is no reason, in our view, to prolong the life of those obsolete statutes and to further compound the problems they have created.

Section 604(b) seemingly would extinguish the Secretary's withdrawal authority except as provided in the Organic Act. It is our opinion that such restrictions are unnecessary and would curtail the Secretary's flexibility to properly manage public land. We recommend that the provision be dropped.

Committee Print No. 1 contains many good points. Of necessity we have focused mainly on those with which we do not agree.

H.R. 5622 is more in line with our views on what the BLM Organic Act should be, therefore we recommend that it be used as the mark up vehicle.

We thank you, Mr. Chairman, for the opportunity to express our views on and support for this important legislation.

STATEMENTS OF THOMAS L. KIMBALL, EXECUTIVE VICE PRESIDENT, NATIONAL WILDLIFE FEDERATION, ON BEHALF OF NATIONAL CONSERVATION ORGANIZATIONS, ACCOMPANIED BY WILLIAM E. TOWELL, EXECUTIVE VICE PRESIDENT, AMERICAN FORESTRY ASSOCIATION; DANIEL A. POOLE, PRESIDENT, WILDLIFE MANAGEMENT INSTITUTE; JOHN S. GOTTSCHALK, EXECUTIVE VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF GAME, FISH AND CONSERVATION COMMISSIONERS; FRED G. EVENDEN, EXECUTIVE DIRECTOR, THE WILDLIFE SOCIETY; CARL K. SULLIVAN, EXECUTIVE SECRETARY, SPORT FISHING INSTITUTE; C. R. GUTERMUTH, PRESIDENT, NATIONAL RIFLE ASSOCIATION OF AMERICA; WESTLEY M. DIXON, JR., PRESIDENT, BOONE AND CROCKETT CLUB; SPENCER M. SMITH, JR., SECRETARY, CITIZENS COMMITTEE ON NATURAL RESOURCES; CYNTHIA E. WILSON, WASHINGTON, D.C., REPRESENTATIVE, NATIONAL AUDUBON SOCIETY; MAITLAND S. SHARPE, ENVIRONMENTAL AFFAIRS DIRECTOR, IZAAK WALTON LEAGUE OF AMERICA

Mr. KIMBALL. I am Thomas L. Kimball, executive vice president of the National Wildlife Federation. I am presenting this statement in behalf of my organization that you have just read. Many of those who represent those organizations are here at the table and will respond if you have any specific questions for them.

We have attempted to limit this testimony to the comments that we can unitably support. There may be additional specific detailed comments from the individual organizations on matters other than these; but for the purpose of the record these are the comments which all of the organizations support.

We will restrict comments to the more basic provisions of the bill on which there is a broad agreement. Those of us familiar with the public domain have pointed out the inadequate attention and resul-

tant deterioration of those lands and resources for decades. These concerns have gone unheaded for the most part.

Now, two recent publications by BLM document the declining state of those public resources. I noted, Mr. Chairman, you do not think much of those reports. Perhaps we do not either, but at least they are the best we have. We do not know of any others that document the conditions of our range resources. They are innumerable—what I consider at least, we consider, to be obvious to any trained observer, that much of the public domain is in poor condition and evidently getting worse.

The reports state that public range lands will continue to deteriorate—I think this concerns me more than anything else—by as much as 25 percent in 25 years if the trend is not reversed. Such conditions not only reduce the land's capacity to support livestock; the degrade other equally important resources such as fish and wildlife, recreation, and watershed values. BLM's reports point out that undeniable fact.

Congress and the administration share responsibility for the deplorable condition of the public domain. Adequate authority, funds, and manpower have not been provided to BLM for its important task. This committee can give the leadership and direction needed to enhance the many public resources under BLM's care. We urge your earnest efforts and swift action in that regard.

While we are in firm agreement with the committee's overall objectives, we do have serious reservations and some strong objections to parts of subcommittee print No. 1.

We firmly believe that the national Forest System should be exempt from the general application of this bill. Previously this committee has stressed the need for consistency between the Forest Service and BLM. While there will be some differences if the Forest Service is left out of this legislation, they will not be major.

I might add, Mr. Chairman, here that there are two ways we can deal with those inconsistencies. One is through this legislation. The other is through amendment to some of the Forest Service legislation. Since they are not combining these agencies, in our view the latter would be perhaps better.

Section 202(e) would provide Congress veto power over land use planning decisions affecting 100,000 acres or more when on or more uses are excluded. Section 204 would give Congress veto power over withdrawals for other purposes involving 5,000 or more acres. We certainly have no objections to providing for congressional review of all withdrawals. We do believe, however, that the veto power is an unnecessary requirement that would restrict BLM's flexibility to properly manage public domain lands. It could provide a forum for continual argument and counter argument among various resource users that could stifle implementation of important public land decision. Congress can always act its will through legislation. It should, however, maintain its policy making and oversight position, and not be involved in the day-to-day management of public domain lands. We recommend deletion of the veto power.

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our view, that language would make competitive bidding unlikely when so many entities receive preferential treatment.

The State, county, city, or municipality would have first rights. After that, adjoining land owners, individuals, and others would be considered. The State and local governments already have authority under the Recreation and Public Purposes Act to purchase land at reduced prices. Their preference rights should be eliminated. We prefer the provisions in H.R. 5622 where competitive bidding would be required except in specially defined circumstances.

There might be one other addition we might suggest, Mr. Chairman, and that is rejected by the public lands study that was done a few years ago at considerable public expense, which stated that the ratio between private and public lands should remain about the same; and that at any sale or disposal programs the will of Congress to this degree should be expressed positively that that particular ratio should be maintained.

We believe that BLM should be given acquisition authority comparable to that of the U.S. Forest Service. As written in section 205 of Committee Print No. 1, BLM would have power of eminent domain "only if necessary to secure access" and "only if lands so acquired are confined to as narrow a corridor as is necessary."

We recommend that BLM also be permitted such power within the boundaries of the public domain as well as for access. These are for incompatible uses, and so forth. In that regard, we prefer the language in H.R. 5622, which was recently introduced by Congressman Seiberling. Such authority is important in piecing together the patchwork of ownership in many areas of the West.

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the lands remain available and the permittee complies with all regulations and permit terms. It would confer a right which is not given to any other user of the public lands. We oppose the granting of any private right, title, interest, or estate in the public lands as being contrary to the public interest.

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We believe that BLM Advisory Boards should be broad-based and multiple resource oriented as directed by the Federal Advisory Committee Act. Such input is essential to proper land management. Continuance of grazing district advisory boards dominated by the livestock industry and establishment of local advisory councils is a duplication of effort which could lead to conflicts between the boards and councils. The livestock industry will be adequately represented on any multiple use advisory board, and we see no reason to continue the grazing district advisory board.

We recommend that section 212 be deleted.

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Committee print No. 1 contains many good points. Of necessity we have focused mainly on those with which we do not agree.

H.R. 5622 is more in line with our views on what the BLM Organic Act should be; therefore, we recommend that it be used as the markup vehicle.

We thank you, Mr. Chairman, for the opportunity to express our views on and support for this important legislation.

Mr. MELCHER. Thank you very much, Mr. Kimball.

We are having staff develop a comparison of H.R. 5622 with Subcommittee Print No. 1 so that as we approach mark-up sessions, the subcommittee will be knowledgeable and familiar with provisions that differ in H.R. 5622. This will clearly lay them out before the subcommittee members so that they can determine their preference in relationship to the two bills.

I find a number of points I want to question. Mr. Kimball, the first one concerns the question of competitive bidding sales. I think it is fair to say that the subcommittee feels that there are possibly two instances where sales should be recommended.

One concerns the communities that are surrounded by public lands and simply need more living space. I do not think we have any quarrel there with the concept of allowing sales. Then, I think, it is fair to say that the committee last year viewed sales of isolated tracts that are difficult to manage as probably being a wise course to take. As I view that, I think of what is known as section 15 lands, administered by the BLM, in vast open country where the use is almost entirely for grazing. Obviously, there are wildlife values and potential recreational values related to wildlife or just getting out into the country. If we were not to make exceptions to competitive bidding, would we destroy the opportunity to solve the problems that we are attempting to solve? For instance, for the communities, how does competitive bidding fit in if you want to allow the community to expand? Are you just going to offer the land to the people who have the best idea on how to make the most amount of money?

Mr. KIMBALL. I think that preference rights for some of these uses can certainly be given consideration. I think it does in some of the current laws. I think that what we are concerned about, if I might make this a suggestion, is strengthening the exchange provision for isolated tracts. I think one of the problems is consolidating for management purposes blocks of land, both in private ownership and that in public ownership. Oftentimes the exchange could not be made because the agency lacks authority to add a little money if there is differences in value and the tracts could be traded, or to make some other adjustments in the trading values. Our concern is that if you keep the sales of lands continually going, you then begin to disrupt this one-third, two-thirds, private-public ownership pattern that we would like to see Congress come out strong for. We would like to see that ratio maintained.

Mr. MELCHER. Well, we do want to include in the bill, of course, the use of money to equalize exchanges, which you recommended for BLM and the Forest Service if I recall your testimony last year. But, now, let us just talk about sales of isolated tracts, and assume that, in most instances, the isolated tracts we are talking about are currently used for grazing, and that is what they will continue to be used for.

Now, in that relationship, do you not see value in the continuance of a principle, as BLM has applied in the past, that adjacent landowners have a preference?

Mr. KIMBALL. Certainly.

Mr. MELCHER. You do not recommend that we have competitive bidding per se, then?

Mr. KIMBALL. I will go ahead and let Dan answer this.

Mr. POOLE. I think we should veto all of this in the context of the last sentence that discusses that part. We said we prefer the provisions of H.R. 5622, where competitive bidding would be required, except in specially defined circumstances. We would want these to be better defined than they currently are.

Mr. WILSON. If I may, Congressman Melcher, section 2050 (-5622) sets up a standard that we believe is flexible enough to take care of the kind of problem you are speaking about when it says,

Where the Secretary determines, if necessary, to assure proper land management for protection of environmental values, he is authorized to sell national resource lands with modified competitive bidding, or without competitive bidding.

As we read that language, if it makes sense if you have a little tract here that is isolated, and it makes sense in terms of land management to sell that to the adjacent landowner, I think under that language you would be free to do it. And yet, it would not force him to do it if there were good reasons not to; for instance, if the adjacent landowner is not a good manager of the land, and you felt it would be a good idea.

Mr. MELCHER. Just before the panel came on, you heard Tom Garrett make a rather passionate statement to protect family operators. And this committee last year was apprehensive that this protection would be lost unless we salted this preference down in the bill itself, making sure by statute that that preference right did exist for these adjacent landowners to bid and to follow that procedure where the BLM establishes appraised values and adjacent landowners are allowed to bid up to three times that appraised value and not have to go any higher. The committee felt that we would thus preserve the opportunity for those people to stay in business. We know what happens to land values. Somebody from a thousand miles away may think it would be great fun to own 80 acres or 160 acres of grazing land in Montana, and bid everybody out of sight, doing extreme damage to the person that really needs the land.

So that is why we have chosen—or, at least last year, we chose—to make it statutory; it would be discretionary in each instance. Maybe we have not drawn that clearly enough, but I detect what we are trying to do is not contrary to what you feel would be in the public interest in this regard.

Mr. KIMBALL. Just speaking for myself, I personally like the discretionary authority much better than the absolute, because I

think you can take that many instances of problems that arise, and it is pretty difficult to be fair in a statute of that context. In my view, that is really why we have an executive agency of Government. Congress sets Federal guidelines and allows an agency to apply that in the overall public interest under those guidelines, with some leeway. It is difficult to write a law that is going to be fair to that many people, and that specific.

MR. MELCHER. Well, we are not striking out on new ground. The regulations of BLM are longstanding, and apparently have worked well. And if that is true, I do not think it is contrary to the public interest to keep it statutory.

Now on your recommending the deletion of the veto power. It is in the Subcommittee Print No. 1. We are not so proud of that particular feature that it is not to be opened to other suggestions. We have had a problem in making sure that there is congressional review of withdrawals or change in management plans. Utilizing the veto powers is just one way of doing it. It is a better way of doing it than just saying the Congress can do it. Congress cannot do it unless there is some set procedure. I, as one individual, or Joe Skubitz as one individual of Congress, or even two or three of us, have a very difficult time making sure that there is congressional review over the decisions made by the executive branch of the Government. But if you have anything to offer in lieu of the veto power that really puts Congress in the business of having some review—

MR. KIMBALL. I personally think that the overview or the oversight powers a congressional committee has, if it is not adequate, maybe that part of it could be strengthened materially. But it seems to me that day-to-day actions of the executive branch of Government, that the congressional committee would find it very difficult and cumbersome to be second-guessing that part of the activity of executive agencies. But if you give them general guidelines, and then they abuse those guidelines, then the oversight procedure and the corrector of committees by law, or even by the oversight hearing itself, tend to correct decisions that have been rendered by the executive branch that are not in the overall public interest.

So, the more intensive use of the overview, oversight powers of the committee seems to be one of the ways that you could get at that.

MR. POOLE. I would like to join with Mr. Kimball in that. I have been in Washington a fair number of years now, and I think that in almost every instance we can see where a situation would be considerably less exacerbated if Congress had, in fact, taken the time to assemble its committee members on these various subjects, and how these agencies actually are exercising the policies and the authorities that Congress has given to them. And I really, just as a personal observation, think that we probably would benefit by the introduction of a lot fewer laws, and the conduct of many more oversight hearings, in a number of these subjects, particularly in the area that I am familiar with in the natural resources area.

MR. SMITH. Mr. Chairman, I would like to mention one or more comments from the arguments. I think sometimes, when we go through a period, at least in the area of our concern where there appears to be some abuse of executive power, or some failure to act in the area—there is a tendency to circumvent legislation. Now, I

thought the Reorganization Act of Congress was going to put more emphasis on oversight, and I also thought they were going to be given more staff in order to accomplish more oversight. I am really concerned that, in this particular instance here, which can simply serve as a kind of a toxin to any other area—if we start writing legislation here, even though we are upset, and we are especially upset right now that here we have had these three big transfers right out of the Fish and Wildlife Services to the BLM, if we had this language, it would have prevented it, or we could have vetoed it. We are aware that this thing cuts both ways, but I really feel that it is not good legislative practice. I would much rather have the Congress drag these people up here in oversight fashion, and go into it in some detail; and whatever comes out of that oversight hearing could then serve as the basis for legislation. And also, a lot of other organizations could get involved into the act, and be helpful too.

There is a feeling, by some of course, that we should do not do anything with the BLM now. We should wait until it becomes a perfect agency, and then we would write an organic bill for it. I do not agree with that. I think it is going to take a long time to give an agency a new mandate, get started, try and reorganize it, get sufficient funds and personnel for it so that we can come up to the level of resource management that we want it to be. And I do not think that, sometimes, you can do that if you put too many restraints and constraints on as a consequence.

Mr. MELCHER. I think we have a major difference here. It is true that Congress has not exercised its oversight responsibility in the past as much as it should, and the new rules mandate oversight responsibility of each committee. But oversight is an after-the-fact type of operation. After they have done something, you can ask them why. But it is clear that unless you legislate some restrictions, the agencies are operating just as Congress has authorized them to operate. You object to what the Secretary decided to do, in regard to the C. M. Russell Game Range, for instance. But in that case, the Secretary has not acted contrary to any mandate of Congress, and has not abused his power. All we can do is question his judgment.

I frankly believe that our oversight responsibility is going to have to be aided by legislative actions, providing for correction by committees of Congress before an executive action is committed if the committee decides it is contrary to the public interest. I think that is the basic flaw of Congress. During the past 30 to 40 years, we adopted legislation giving the executive all this discretionary authority. They use that discretionary authority. Congress gave it to them, mandated it, they used it or implied that they used it.

Mr. SMITH. Mr. Chairman, I am not trying to be contentious. But it seems to me that this is what the oversight provision is for. You said, maybe after the fact; but it is a reason to review, for an example, when you say it is not just a matter of abuse of power—it is a question of judgment. I would think that neither of these are ruled out in a serious oversight hearing. I have attended many of them in 25 years on the Hill, and I can say that some of them would go right to the judgment of the Secretary, and that this is very much a part of the analysis. And it is at that point that the Congress may decide that they wish to introduce legislation, and then write some-

thing very specific giving him a directive, because it was not in the feeling of Members of Congress that he would interpret the legislation of this fact.

Mr. KIMBALL. Or to rescind the action.

Mr. SMITH. Or to rescind the action. We have seen the reaction, rescinded, in some instances.

Mr. POOLE. Perhaps there have been some mistakes made on both sides.

Mr. SMITH. Possibly.

Mr. MELCHER. It is certainly after the fact. Actually, I dare say that there are not 16 votes in the House of Representatives that are currently aware of the action taken by the Secretary of the C. M. Russel Game Range. It would be out of the question, passing a special piece of legislation rescinding the action of the Secretary in that instance.

Mr. SMITH. Mr. Chairman, again let me say—

Mr. MELCHER. I am not saying that his judgment was right or wrong. But if it were to be taken to the House floor, well, it would probably be considered as a sop to two or three people in this committee, if even brought out of the committee and taken to the House floor.

Mr. SMITH. You say 16 people under the bill came before this committee not too long ago; that the ranking minority member—we had five votes when we started out, and after the individual service was brought up here, what it amounted to was an oversight hearing, and there was an extension. After an extension on this with congressional interest, that bill passed, by seven votes on the floor of the House, and that was Piscataway Park. And I would say that if we had it right now, if we had a serious, indepth oversight by that committee on this particular action, by the time the committee got through, and the press and the media and the organizations involved had their say, then when you go to the floor of the House, I think you would have more than 16 votes.

Mr. SKUBITZ. If the gentleman will yield—

Mr. MELCHER. Yes.

Mr. SKUBITZ. That is the only way to do it; that is the reason we got it through.

Mr. SMITH. I agree. But that is, I think, what we are supposed to do.

Mr. MELCHER. I think part of the answer, though, is how many years did it take?

Mr. SKUBITZ. A dozen years.

Mr. MELCHER. We think we have to act more expeditiously, and this procedure provides that opportunity to nullify a decision made by the executive agencies in these instances. Now, we are kind of wedded to that idea, but if there is a better way of doing it, I would be delighted to have it.

Ms. WILSON. One suggestion I would make on behalf of Audubon, that interests me from some of the earlier conversations. Mr. Shafer mentioned his view, although I am not a lawyer, I share it; that in the specific case of the game ranges, this withdrawal and review authority would not have done us any good, anyway, the way it is worded. That is the way I read the bill, too, and it might be worth

exploring how you would include that kind of circumstance so that things do not fall through the cracks. At least, our organization is unhappy about that. I think it would be worth looking into just what kind of mechanism there is for dealing with that problem, if that is the problem; as you already know, that is one of the great controversies.

Mr. KIMBALL. I was going to say, just looking back a number of years that I have been associated in management affairs that cuts both ways: that there have been some withdrawals which, in our view, were exceptional. They reserve the values that our organization holds dear, and that was done by the Executive act, and we were pretty sure that had we had to go the legislative route it would have been a long and tedious, and, perhaps, many of the values that were protected would have been gone by that time. And there may have been others on the other side, so I say it works both ways.

I think to be honest about it is one of the reasons why we have some reservations about it, because at many of the areas that we look back on were the values that we hold dear. Our concern were done by the withdrawal route.

Mr. MELCHER. I think for that very reason the committee adopted the veto feature last year, because we do not want to interfere. It does not take an affirmative action of the committee to approve an action. This leaves the agency free to act promptly, quickly and in the public interest. We were using the veto portion to say if we do not agree we have got a right to say why we do not think it is in the public interest. We now have about a year and a half experience with the veto provision to put in the Alaskan pipeline bill, with respect to oil and gas pipelines across public lands.

We find ourselves quite often representing considerable interests that are limited to a geographic area. By that, I mean I represent a lot of acres, a huge, massive portion of Montana, and my colleague in North Dakota represents the whole State, but there are only two of us. To begin with, about the Arctic gas pipeline, which may bring natural gas across Alaska, down the MacKenzie Valley through Canada, and across our States and several other States and to bring gas to the Midwest.

As far as I am concerned, the application for the act would seem to preclude any opportunity for people in Montana, consumers in Montana and North Dakota, to have any access to the natural gas. It would cross our States for many hundred of miles. We felt that the FCC should review that. They would be joined by others now who are here in Congress and our respective States as intervenors. But we will not just be talking to the FCC which, after all, is one avenue by which to establish our concerns. We are also going to have the opportunity to discuss it in the subcommittee if and when the Department of Interior gives serious consideration to granting a permit across public lands in Alaska, or for that matter over the public lands that might be crossed in Montana or North Dakota.

In that review, we are going to find that we have an opportunity to express our concerns again for what is important to our States' health. These are the type of things that we have to look at here in Congress when we get our chance to express our concern of our people and to find a way of doing what is right. Oversight hearings are

fine, but if the Federal agency has already run over and trampled you, we do not find much relief or much satisfaction in the oversight hearing. We may not change their mind, and they could usually correctly point out that they have followed the wishes of Congress the same provided for in the existing statutes. They claim they have hardly ever abused statutes or used their discretionary powers illegally. The results that we just question their judgment.

I think it is a matter of philosophy. Yes.

Mr. TOWELL. Mr. Chairman, another subject, if I may, I would like to confirm the support of the American Forestry Association for this testimony, and we emphasize one portion of it. I would like to see the U.S. Forest Service left out of this legislation.

As Chief McGuire has already testified, the Forest Service exercises these authorities, sales authority, withdrawal, exchange, and rights-of-way, and I see no need to complicate a good working authority which that agency already has.

As one recommendation, the multiple-use definition in this legislation differs from that of the multiple-use definition already in operation for the Forest Service, and I would recommend for the point of making it compatible and workable that the same definition be used, and I would prefer that of the Forest Service which has been in operation for a good number of years and equivalent.

Mr. MELCHER. Well, is that not a point though that this multiple-use definition in this bill would have to differ because we are dealing with minerals.

Mr. TOWELL. No, I do not think so. I think we need to single out resources in defining a principle.

Mr. MELCHER. I think a more important point is that your analysis may not be accurate. It is incorrect, Mr. Kimball, to imply, if that is what your testimony does, that the national forest lands are covered by the general provisions of this bill. That general coverage was deleted very meticulously and very carefully by a series of amendments proposed by Mr. Dellenback, former member of this subcommittee, who went over the bill very carefully. We now want to get down to the very specific points where the Forest Service should be in this bill.

Well, for instance, would you like us to delete Forest Service from the oversight review. I know you do not, but—

Mr. KIMBALL. No, but the advisory board's concepts should be on a multiple-use basis on all of these things. The Forest Service has their own multiple-use boards. There are many complications there.

Mr. MELCHER. Has staff paid attention to this testimony? Would you repeat that, because it is strange to me, Mr. Kimball. I do not know that we are dealing with the Forest Service Advisory Board.

Mr. KIMBALL. Well, I am not sure either of that designation.

Mr. MELCHER. Mr. Kimball is saying that we object to including the Forest Service Advisory Boards in this legislation. We are now aware that they are in there.

Mr. SHAFER. Well, the only boards we deal with are those authorized under the Taylor Grazing Act.

Mr. MELCHER. Yes.

Mr. KIMBALL. It involves withdrawals, grazing right-of-way, exchange.

Mr. TOWELL. Sales authorities, grazing, withdrawals, exchange authority, duration of leases, and rights-of-way.

Mr. SHAFER. The Forest Service has been brought in to some extent under this bill, but to answer the chairman's questions specifically, we do nothing with the Forest Service grazing advisory boards under this bill. We do say that there should be a continuation of those district advisory boards set up under section 18 of the Taylor Grazing Act.

Mr. POOLE. If I might point out, that was a diversion from the first question, the advisory board—the first question was what is the overlap of the implications with the Forest Service, and Mr. Towell said grazing, land sales, duration of leases, rights-of-way and withdrawals.

These are the major ones.

Mr. MELCHER. Well, we have to take them up one at a time. Sales is a problem, which you have admitted, for the communities that are entirely surrounded by public domain.

Mr. KIMBALL. But, you see, in the case of the Forest Service that is usually in the higher elevation, very few urban or even suburban communities—

Mr. MELCHER. That has not been our experience.

Mr. KIMBALL. Let me put it in this way, not merely as many as in BLM lands.

Mr. MELCHER. I do not know, but there is a problem with forest lands. We have had testimony on that all throughout the hearing stage. I am sorry the gentleman from California is missing. California is big on the committee, and they have land in many communities surrounded by national forest lands. They are one of the advocates of some provisions for allowing some sales. And Arizona is similar.

Mr. KIMBALL. My understanding is that they currently have authority for exchange and disposal, and I am not sure just how that law applies specifically.

Mr. MELCHER. If I remember the testimony correctly, in March here, they wanted this extra adjustment, 20 percent in cash or some provision for cash. They view that as an advantage, is that right?

Mr. KIMBALL. That is on the exchange parts. I will repeat again, my concern, and I speak specifically for myself, about the disposal of public lands generally. I think what is missing in this bill is a firm declaration about maintaining the current ratio under those circumstances, on exchange, and particularly on sales, so that if we apply this to forest lands to deal in lands around urban, suburban communities and then we sell isolated tracts, and both of those, I think, that that collectively eventually will materially change that percentage unless there is some sort of a declaration by Congress that the objective, to maintain that ratio.

Mr. MELCHER. I feel that we have drawn the line very carefully here.

Mr. KIMBALL. But, there is no declaration of that, Mr. Chairman, anywhere in that bill unless I missed it somewhere. And that was one of the first bills I remember of the Public Land Law Review Commission study made under Chairman Aspinall. That was one of the first major conclusions of that study.

Mr. SMITH. Mr. Chairman, I am a little bit confused. On page 18 of the bill, line 21. the matter specifically directs the Secretary of Agriculture that when he determines a proclamation of forest

lands located adjacent, et cetera, et cetera, that presumably this proposal implies certainly that there is not to exceed 640 acres of National Forest System lands.

Now, does not the Forest Service at the present time operate under the Townsite Act, and I understood—as far as Mr. Manguire's testimony was concerned—that he indicated that they had not occasion to use it to any extent at all, which essentially is saying that they do not have a major problem in this area.

I do not know the details of the Townsite Act, but I think it is highly appropriate because I gather that this section here—if that amendment does not amend the Townsite Act—does it not Bill?

Mr. MARK REIMER. This section amends the Townsite Act. The present Townsite Act has not been used. It would provide for the Secretary of Agriculture to make the actual subdivision and sale, put the Secretary of Agriculture on this subdivision sale business. We have used existing exchange authority to accomplish objectives around communities. This amendment would amend the Townsite Act, and it would allow the conveyance of lands to the community. The community would be in the business of subdivision or sale.

This is an improvement over the present Townsite Act. The Forest Service has not sought a sale authority. We have used the exchange authority.

Mr. KIMBALL. Have you been able to satisfactorily perform under the exchange generally?

Mr. MARK REIMER. It is our view that the committee's discussion has indicated whether or not we move fast enough or are flexible enough, but we have handled exchanges adjacent to communities and have not had a problem.

Mr. KIMBALL. That is the way I would prefer to see it.

Mr. MELCHER. I want to draw to the attention of the panel that this is the only section dealing with sales that applies to the forest. If you find some problem with that interpretation, I would be glad to correct it, but that is the only section presented to us by the Forest Service. That is an improvement to solve the problem, and that is the only thing that is in the bill that deals with sales.

Now, if you have objectives to that—

Mr. SMITH. That is the only thing for sales.

Mr. MELCHER. Now, do you have objections to that section?

Mr. KIMBALL. I would if they could accomplish the purpose by exchange, because there you are putting an equal amount of leased value land back in the public ownership.

Mr. MELCHER. The problem is that many communities cannot resolve their problems by exchange. If that were the case there would be no urging on this committee to amend the law regarding Forest Service lands and these communities.

Mr. KIMBALL. Maybe the solution to that particular problem would be to suggest, or maybe write as a stipulation in the law to attempt to achieve that purpose through exchange. In the event that is not successful, it may be sold. But I like the exchange provision.

Mr. MELCHER. Well, we do not have any problem with the Forest Service. That is an improvement to solve the problem, and that is the resolve the purpose. They have that authority now and they utilize it, but simply fall short of resolving the problem.

Mr. KIMBALL. But, Mr. Chairman, is not this really the proper function of Congress to give this type of direction to an executive agency, if you prefer them to deal with their urban problems or their community problems on the need for expansion by exchange first as a means of accomplishing the purpose, that that is really a prerogative of the Congress and they should extend that direction without just saying, well, we can leave it to you to either sell it or exchange it.

Mr. MELCHER. Well, that is the very purpose of this bill. It says that except in rare instances, public lands ought to be held in public ownership. We are not encouraging sales except in two instances. I do not think there is any question but the thrust of the bill, as far as Forest Service land is concerned, is by all means exchange if that is possible. It has to be restated more clearly. I do not see that we would have a problem in doing so.

Mr. KIMBALL. While we are on this business of land, there is considerable difficulty in the acquisition of land, particularly in holdings in both BLM and forest lands. There are many incompatible uses, as I have seen myself, personally, that, at least in my view, would be in the overall public interest to eliminate, a conflicting use, let us say, in the middle of a wilderness area, and the problem has been providing, maybe, not the the authority, but the funds, so far, to acquire those lands, so it is in a direction really from Congress. I would like to see the bill strengthened from this viewpoint that we use wherever possible the exchanges, the additional moneys to make sure that there is acquisition of inholding or those particularly conflicting uses, those that conflict with the particular use of a forest and to strengthen that aspect of the land exchange around a sale land purchase position.

It is not limited to the east; it is very extensive to the West.

Mr. MELCHER. The gentleman from Kansas.

Mr. SKUBITZ. Under the language we have here, does this limit any townsite to one application of only 640 acres, or does the townsite come in and get more than the 640 acres?

Mr. MELCHER. 640 acres. What is the town limit?

Mr. SHAFER. There is no limitation on the number of applications that they can make, Mr. Chairman. It is just a limitation on the acreage within the one application.

Mr. KIMBALL. I think hereto that cities and communities have a preference for this type of land acquisition and take advantage of the appreciation advantages, if you want, given that that is one thing. But that was another one of the—we suggested competitive bidding on some of these things so the true values of those types of property and the value would come to the Federal Treasury, unless you specifically want to get that particular appreciation of value if you are going to give them more land than they really need currently at one time, like 640 acres and have them apply for several of those in the process of a year.

Mr. MELCHER. I have to ask a couple of more questions on national forests because we want to have a clear understanding of what is in the bill and what your specific objections are with respect to provisions for national forest lands. One is on the duration of leases.

If I read this testimony correctly you seem to say that the methods followed by the Forest Service are okay and the methods followed by the BLM currently are okay.

Mr. KIMBALL. I think the distinction, Mr. Chairman, is between the automatic renewal of a 10-year lease. I know the Forest Service leasing authority now, that renewal is discretionary with the Secretary of Agriculture.

Mr. MELCHER. It is with this bill, too.

Mr. KIMBALL. No. In this bill it is to be made automatic, as I understand it.

Mr. MELCHER. Are you not advocating renewal as long as there is proper management of the land by the permittee? There is a requirement for an allotment management plan?

Mr. KIMBALL. That would be discretionary beyond that with the Secretary.

Mr. MELCHER. Well, how discretionary?

Mr. KIMBALL. Well, if for example, there is other uses that are more than in the public interest, then he can turn in into a lease.

Mr. MELCHER. That is in the bill. That is very definitely in the bill. If he wants to use the lands for another purpose, he does not have to wait for 10 years.

The bill very specifically says that land will not be leased if it is not available for grazing, or if the Secretary determines that it is needed for a higher use, it will not be leased for grazing. The lease is to be canceled.

Mr. KIMBALL. If you have the bill before you, Mr. Chairman, on page 33, section 211, it says:

Permits and leases for domestic livestock grazing on lands described in Subsection 210(a) of this Act shall be issued for a term of ten years in a grazing capacity except as provided in Subsection.

Now to me that is not discretionary.

Mr. MELCHER. Well, what about the exceptions?

On page 34, line 2: "(2) the land will be devoted to a public purpose prior to the end of the 10-year term." You know, we take an awful lot of heat from conservation groups on this particular issue but I do not know that the heat is justified.

Mr. KIMBALL. I guess, Mr. Chairman, speaking as one who has an interest in the wildlife resource, which is a public resource and in my view at least as just as much a legitimate claim on the values of public land.

Let's take forage, for example, as one. It shares with domestic livestock, and you know, we do not have those specific mentions to protect the values for wildlife in this section. Grazing is an economic use and wildlife is also an economic use. It is you take a look at it from the standpoint of the money that is expended for the taking of the surplus crops there. And our concern there is a definition of other public values—should they be spelled out so that we are sure that the other uses, legitimate uses of the public land are given equal consideration.

For example, even under the Taylor Grazing Act, I guess it is not in the law but in the Interior Department regulation it says that a reasonable amount of forage shall be reserved for wildlife.

Well, I have been 38 years in this business trying to find out what a reasonable amount of forage is, what a forage reserve for wildlife should be, and I am still waiting. Neither the BLM nor the Forest Service has ever defined that.

Now if we want to start talking about, in essence, protecting specific values such as grazing, and I think we owe it to ourselves to consider the values of wildlife and other public values and give them some specific protection.

Mr. MELCHER. I live in a country where there is a lot of antelope and deer and the better the grazing, the more antelope and deer. So we watch this opportunity for more wildlife in the developments for better grazing.

Mr. KIMBALL. We are talking here about grazing leases, which is, in essence, a privilege, and I think our concern about the fees about automatic extensions of permits tended to translate that into more of a right rather than a privilege that is given the same thing for wildlife purposes.

Mr. MELCHER. Well, at any rate, as I read your testimony, I cannot see where you modified it in your colloquy here.

As I read your testimony, we have done what you recommend. We have that in the bill.

Mr. KIMBALL. In item F on page 35 of the bill—this is again in section 211—it says:

As long as lands for which the permits or lease is issued remain available for domestic livestock grazing, no permittee or lessee combined with the rules and regulations promulgated by the respective Secretary and who shall have complied with the terms and conditions of the permit or lease shall be denied the renewal of such permit for lease.

Mr. MELCHER. What is wrong?

Mr. KIMBALL. Suppose the land is supposed to be used for wildlife. Let us say, for example, that they could still—

Mr. MELCHER. No, it will only be leased if made available for domestic livestock grazing.

Mr. KIMBALL. What is to prevent it? There is nothing in any legal act to give, say, a permit for wildlife grazing?

Mr. MELCHER. Let us get your lawyers on this. I am not entirely satisfied with this section myself. But I cannot read this whole section to do anything different from what you have recommended. It says that there will be leases up to 10 years. But a shorter term will be granted where the land is pending disposal or the land will be devoted to a public purpose. It must include an allotment management plan under the conditions you outline. And then we get down to (d):

That nothing contained herein shall be construed as restricting the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease in whole or in part pursuant to the terms or conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

It seems to me we are putting into the statute exactly what the Forest Service does, for instance. No more and no less.

Mr. SMITH. I am not arguing, Mr. Chairman, that the bill does not give the authority to give the eSecretary to cancel or modify when there is a violation. What we are saying is that as we read it, and we may be reading it incorrectly, but as I read it, and reread it again this morning, that it occurs to me that if a permittee is complying with the regulations that at the end of 10 years he has another automatic 10 years to go, if he is not complying with the regulations, that is a different story.

Now there is one thing that you mentioned here and that is the second part in the exclusion which says "The land will be devoted to

a public purpose," if the land, as you said, "the land will be devoted to a public purpose prior to the end of the 10-year term."

I mean unless there is some sort of definitional concept of what public purpose is, and I do not see how that you can ever restrain this man from redoing his lease——

Mr. KIMBALL. I think maybe in order to resolve this, Mr. Chairman——

Mr. MELCHER [continuing]. Well then, is it the question of identification of what public purpose is?

Mr. SMITH. Well, that would be highly strange in the matter. I think you could hardly simplify this by making it reasonably discretionary. I do not think that in the Forest Service or in the Bureau of Land Management that we have had a real serious long-term problem of having grazers or permittees not having their permits renewed.

Mr. MELCHER. What "(f)" says, as far as we are concerned, is the that has it, if it is still available and it is going to be leased for grazing purposes, is going to get the first chance at it.

I do not know where the objection comes from. We have taken a lot of heat here over a section of the bill, as we understand it, which is written to comply with what you approve of. Apparently it is a question of interpretation.

Now we have got staff, we have got counsel, and I think your people have counsel. And if you find that this language does not do what we say it should do, well, let's get the right language because we seem to be agreeing on principles.

Mr. KIMBALL. Can we conclude this then by saying that we are making the same offer as the gentleman from the Mining Congress did? We have——

Mr. MELCHER. Absolutely.

Mr. KIMBALL. We have our staff, we have all ours. We would be happy to sit down with your staff and see if we cannot work this out.

Mr. MELCHER. Well, we should bring you up to date, though on one point. We have been persuaded that, I think by both Forest Service and BLM, that there is no point in saying 10 years. We have no—at least I have no definite argument for saying 10 years because what we are attempting to say is if you have a lease, Mr. Rancher, if you have a lease now, you can continue to have that lease so long as the land continues to be available for grazing and you do not abuse it and you follow through with requirements.

Mr. MELCHER. There may be objections by some members of the subcommittee. Mr. Steiger seemed to want to retain the mention of 10 years because of the advantage it gives to the rancher when he goes to talk to his banker and the banker says, "Well, you have a 10-year permissior lease to do business with." I fail to see that is significant. But I mention this because as one member of the subcommittee I have no real argument for stating 10 years. What I am really interested in saying is what I have just said and upon what I think we agree in principle.

Mr. SMITH. Mr. Chairman, if it goes to the bank as a 10-year lease, if he is caught in violation of one of the regulations he is out anyway.

Mr. MELCHER. And when you go to the bank on your 10-year lease and you have only 2 years to go, it seems to me that you are in worse shape.

I am glad we have had this colloquy because I think in principle we agree. It is now a question of how we can spell it out in the bill.

Mr. POOLE. I hope we do not leave any doubt about our feeling of the acute desirability for a sound BLM organic act hopefully cleared through Congress this year.

Mr. MELCHER. I think it will. I do have one more question dealing with the national forests. That is on rights-of-way.

We feel that, for all sorts of reasons, rights-of-way legislation needs to be modernized and we can do a sensible job for BLM. Why should we not do this same job for the Forest Service?

Would you spare telling us how many statutes are on the books dealing with the Forest Service and rights-of-way? We know there are scads of them.

Mr. TOWELL. I understand, Mr. Chairman, that the Forest Service has agreed to this and that there is a need for clarification.

Mr. MELCHER. Does that remove your—

We will, of course, pay attention to what your suggestions are regarding new grazing fees, but we are not satisfied with the grazing fee level of BLM or Forest Service. We think they are completely out of line. We think they are unfair to the public. We think they are so low as to be unfair competition to the rest of the livestock industry who has to go out on the marketplace and lease their lands of vital interest or who own their land.

I hope you will not think badly of us if we establish somewhat higher fees.

Ms. WILSON. I think all of us, Mr. Chairman, would like to see them higher. Again, it is the question of what is the best way of getting more equitable fee, and that is where the difference is; but we do share your concern that these are now much too low, and they are not fair to other people.

Mr. MELCHER. I would say that we have got enthusiastic support from most segments of the livestock industry. To put it on a basis of cattle, when cattle are worth more, you pay more for the grass. It has worked in States.

Mr. KIMBALL. Can I make this comment, however?

I think my concern over the years has been to take out the subsidy which has been paid to people who own grazing permits on either the national forests or the Bureau of Land Management public land and who do that in such a way and extend it over such a period of time so that it does not really hurt a livestock operator too much to give him time to amortize what value he has paid for that grazing permit. But it has always been difficult for me to accept the trading of these grazing permits on public lands and the values attached to them and to have even Federal banking agencies loan money on the values of those permits.

And I would like to again register my deep concern for continuation of this concept and that whatever the committee finally decides in relation to the grazing fee schedule, to try and be as fair as you can to the current grazing permitholders but to have that objective down the line of eventually taking that subsidy out to the point where that grazer has to pay as much for his grass on public land as somebody else does that has to go out and buy it on private, and thereby eliminate that right or assessment.

Mr. MELCHER. Well, we would like to have this on the basis of fair market value. It takes you forever to get up to the fair market value. In my judgment, under the schedule that the Forest Service and the BLM have now, they would never reach fair market value.

Mr. KIMBALL. But if the Congress, in essence, can make a mandate that they were to apply that original formula that was undertaken back in, when was it, 1966 within that 10-year period, it would get up to that level. The problem is then the administration.

Mr. MELCHER. I cannot accept that. I do not know. I do not think their formula ever would get up to fair market value even if they had not had the delays. I do not think it was designed to get to fair market value.

Mr. KIMBALL. That may be, but they spent an awful lot of Federal money, they spent an awful lot of Federal money to achieve that particular purpose and it was supposedly an objective study by independent people, economists outside, and I thought at the time that there was a general acceptance of that by both the livestock industry and conservation groups that that was a good point.

Mr. POOLE. The simpler way out, then might be, rather than by putting in specific prices and whatnot, even in an act of Congress, to simply state that they will be at fair market value by x year.

Mr. MELCHER. Well, my problem with that, frankly, is this—the agencies' view of fair market value does not jive with that I would call fair market value. You know, getting up to I think they are about \$1.20 right now.

Forest Service is at what?

Mr. MARK REIMER. I think it is \$1.23 now.

Mr. SHAFER. \$1.11.

Mr. MELCHER. \$1.11.

Mr. MARK REIMER. It is still in that low bracket.

Mr. MELCHER. If they had been allowed to continue without the interruptions in those steps, I think it would have been, and this is practically the end of the 10-year period, it would have been—

Mr. SHAFER. \$1.50 if there had been no moratoriums.

Mr. MELCHER. And we are almost at the end of the 10-year period. The figure quoted by staff is \$1.50. Well, that is not anywhere near fair market value.

Mr. WILSON. Mr. Melcher, following up on Dan Poole's suggestion, I know the Department of Agriculture every year prepares statistics on the average grazing fees on private lands and they break it down by States and then there is a national average, and maybe the thing to do would be to use that figure.

Mr. MELCHER. They offset some. That is where the gap is.

We allow it to be discretionary so they establish a fair market value in their discretion.

Mr. KIMBALL. The best test, Mr. Chairman, would be to, whenever you could not sell one of those grazing permits for \$50 a head or \$500 a head, you would have arrived at that point at the fair market value.

Mr. MELCHER. We agree. That is what will actually happen when grazing—

Mr. KIMBALL. Well, then I will object as though they are the same.

Mr. MELCHER. I want to warn you, though, that in my judgment what we will come out with, even though it will be higher than existing grazing fees will not, in my judgment, approach fair market value. I think that we can allow them to go up gradually and I think that is what you advocate as long as we keep track of it and see that the formula that is used does work up to the fair market value.

I think it would be doing our job. We can get there this year, or next year, or in 2 or 3 years. We at least know that it is approaching that.

I think we could do it.

Mr. KIMBALL. As long as you are making progress toward that goal, I think we can do it.

Mr. POOLE. Just one final observation. It is kind of fun to drop-kick people around a bit, particularly agencies. But it has not been my experience, with respect to the grazing fees, that the agencies were holding them down. The decision is as to whether or not to impose the increment and that sort of thing, where it would be made on a much higher level, and the agencies, in effect, were told what to do. I think that if we can reduce that, if we can minimize that at an extremely high level, political interference and direction, I think that anything that we can do in that area to get rid of it, to minimize it, would be extremely helpful; to lock it in to that degree.

Mr. MELCHER. That is a fair statement, Dan. I am glad you made it, because it is true that the Forest Service and BLM would be called from upstairs. Then, of course, that is an argument for congressional review. [General laughter.]

Thank you all very much. Without objection, the statement by the Wildlife Society will be made a part of the record at this point.

[The prepared statement of Fred G. Evenden follows:]

STATEMENT OF THE WILDLIFE SOCIETY, PRESENTED BY FRED G. EVENDEN,
EXECUTIVE DIRECTOR

The Wildlife Society, which it is my privilege to represent here today, represents professional workers in the field of wildlife science and management. Its membership is worldwide, but mainly here in the United States, with most of its members employed by a variety of federal, state and provincial agencies, and universities and colleges.

The Wildlife Society supports the formal statement just presented to you. In addition, it seems worthwhile to point out that the trend toward rapid deterioration of land and related environmental qualities, including wildlife, on public lands must be turned around.

Public benefits for the long-haul, must prevail over short-term private benefits on public lands. Further Bureau of Land Management wildlife staff must be created adequate to the unbelievable task that lies ahead.

The demands that human societies make upon the earth and its biota inevitably result in environmental change. Many ecosystems have been exploited for immediate monetary profit rather than managed for sustained biotic yields. Such careless or excessive exploitation often leads to the unnecessary degradation of the environment. The common aim of mankind should be the perfecting of processes for deriving support from the environment without destroying its stability, diversity, productivity, or aesthetic values.

We believe a properly planned and executed organic act for the Bureau of Land Management will help achieve these objectives.

Mr. MELCHER. We have one more witness that has been most patient today. We are anxious to hear from him. That is Charles

Clusen of the Sierra Club. Chuck, we are pleased to have you with us again.

Mr. CLUSEN. Thank you, Mr. Chairman.

Mr. MELCHER. Chuck, I believe it is practical, and if it meets with your approval, to have your entire statement printed in the record at this point, as if read.

Mr. CLUSEN. That would be very good, Mr. Chairman.

[The prepared statement of Charles M. Clusen follows:]

STATEMENT OF CHARLES M. CLUSEN, A WASHINGTON REPRESENTATIVE OF THE
SIERRA CLUB

Mr. Chairman, and members of the Committee, I am Charles M. Clusen, a Washington Representative of the Sierra Club, on whose behalf I am appearing here. The Sierra Club is an international environmental organization of over 148,000 members founded in 1892 which has had a long, historic concern with the protection of this nation's public lands. We feel the public domain lands left under the jurisdiction of the Bureau of Land Management, the national resource lands, have been for too long neglected and abused. They have been considered the left-overs—available for exploitation for private and corporate profit. For this reason we welcome these hearings and the opportunity to testify. We support the passage of a good BLM Organic Act which can put our nation on the road of solving what has become a crisis for our national resource lands.

Specifically, we fully endorse HR-5622, the National Resource Lands Organic Act. We strongly urge the Subcommittee to use HR-5622 as the Mark-Up vehicle. We feel there are serious problems with Subcommittee Print #1 which I will address later in my statement.

Yet, we must report to you that we have concluded that this legislation alone will unfortunately not correct a fundamental problem without amendment. Where the BLM has many problems not of their making—such as a lack of proper enforcement authority, manpower and funds—problems this legislation would correct or at least set improvement in motion—there is no assurance that the practices of maladministration by the BLM will be corrected. Because of the long record of past and current abuses of lands under BLM management, we have been forced to seriously question BLM's commitment and ability to manage the land properly. Because of BLM's apparent dedication to land exploitation and their insensitivity to environmental values, we urge the Committee to consider whether it is still a good idea to give the BLM an Organic Act with far-reaching powers and a commitment of greatly increased resources. The Sierra Club has been a strong supporter of a BLM Organic Act for many years. Mr. Chairman, I submit that our dedication toward seeking proper management of the national resource lands has not waned in the least. It is the need of proper land protection and management which should be the focus of attention here today, not an agency with an undistinguished or even negative track record. The lands need an organic act—not BLM. Consequently, we urge the Committee to consider creating through this legislation an entirely new agency—perhaps called the National Resource Lands Service which would be the managing agency of the renewable resources of our remaining public domain lands with a multiple use—sustained yield—environmental protection mandate. The administration of the mining laws, the Outer Continental Shelf lands and other energy development programs would remain with the existing BLM since these programs and the philosophies behind them have received the main emphasis and attention from the agency in recent years. An alternative approach would be to transfer the National Resource Lands to the Forest Service in the Department of Agriculture. I might point out that if this approach were selected, the legislation necessary would be very short and simple since the Forest Service already has Congressionally enacted authority. We must make sure we have an administering agency who will do the job properly.

AN ANNOTATION OF GRIEVANCES

1. Recently a policy shift of the Nixon Administration to reduce the federal involvement in wildlife management took another leap in the wrong direction under the Ford Administration. Secretary of the Interior Morton has decided to transfer three of the largest units of the National Wildlife Refuge System—

some two million acres—to the BLM from the Fish and Wildlife Service. The areas are the Kofa Game Range in Arizona, comprising 660,000 acres; the Charles Shelton Antelope Range in northern Nevada, comprising 578,000 acres; and the Charles M. Russell National Wildlife Range in Montana, comprising 970,000 acres. While these ranges have been under joint Fish and Wildlife Service/BLM management since their establishment by President Franklin D. Roosevelt in the 1930's, it has been Fish and Wildlife that looked after wildlife habitat while the BLM handled grazing and mining. Threatened by the shift are such endangered species as the peregrine and prairie falcons and some of our nation's finest populations of desert bighorn sheep. Studies have repeatedly shown that BLM has allowed extensive overgrazing and other practices detrimental to wildlife habitat protection. In 1965 a jointly-sponsored BLM and Fish and Wildlife study conducted by Harper and Wiseman concluded, "... the delicately balanced vegetative complex on the desert areas involved cannot support livestock and maintain its inherent potential to serve wildlife." The Harper-Wiseman report recommended that grazing be phased out within seven years, but the BLM has allowed it to continue.

In the Kofa Game Range, the BLM people turned their backs on unauthorized activities of one particular grazing permittee. The Phoenix District of BLM authorized the permittee to maintain a virtually abandoned road for the purpose of moving cattle. A fairly major road construction project resulted. In a letter to a Sierra Club representative, the Arizona State BLM Director stated, "The grader operator skimmed the surface of the road to an extent not authorized." But the permittee was only "cautioned" against further such activities. Certainly the grazing problem can't be solved by giving BLM sole jurisdiction. These transfers must be viewed in the context of other proposed transfers of units of the National Wildlife Refuge System to the States. The administration may be on its way to denying any Federal role in wildlife management, saying the States should do it all, reserving only land management to the Federal Government agencies. Who will make sure then that wildlife habitat is properly managed? In spite of BLM's apparent disregard for wildlife, they say they can manage wildlife as well as the Fish and Wildlife Service. Next they will say they can manage parks as well or better than the National Park Service. Rumors are already surfacing that the BLM wants to manage National Parks in Alaska. We deplore this empire-building ambition of the BLM. How can they possibly in any form or manner do a job comparable to the National Park Service and the Fish and Wildlife Service, which are preservation-oriented agencies, when the BLM cannot hold up against the exploitative interests on the national resource lands?

2. A matter in Alaska which has outraged conservationists is the BLM's Primary Corridor System for Alaska as outlined in the October 1974 document, titled "Multimodal Transportation and Utility Corridor Systems in Alaska: A Preliminary, Conceptual Analysis." This hastily-drawn "study" proposing 39 primary utility and transportation corridors crisscrossing Alaska, if implemented, would bring pipelines, roads and railroads across many of the areas the Administration has recommended for National Parks, Wildlife Refuges, and Wild and Scenic Rivers—unalterably damaging critical wildlife and scenic values. The study appeared to assume total development of all known mineral and energy resources by the year 2000. I submit, the BLM does not know except in a few cases which resources will be developed or even which ones are economically feasible for development.

Yet they don't hesitate to jeopardize well-documented and studied land areas which BLM's sister bureaus—the National Park Service, Fish and Wildlife Service and the Bureau of Outdoor Recreation—have identified as areas necessary for preservation in the national interest.

3. A very general complaint about the BLM is its refusal to comply with the National Environmental Policy Act of 1969—a landmark piece of legislation—whether it be for their land use planning activities, grazing management, oil and gas leasing, or land exchanges. In Utah the BLM has yet to concede that an environmental impact statement is required for the proposed Castle Valley land exchange, located near Moab, which involves some highly scenic land. It required a law suit by the Natural Resources Defense Council to force the BLM to do something more than the overall programmatic impact statement concerning the BLM's grazing activities.

In the Outer Continental Shelf oil leasing program, the BLM has hurriedly put out a totally inadequate EIS which virtually ignores the associated on-

shore impacts of OCS oil development. The environmental studies and analysis that should be done could hardly be done for a million acres of OCS lands—much less 10 million acres.

4. BLM's leasing and management policies for Federal coal lands in the west for the last five years should be an embarrassment to the BLM and this Administration and serve as a striking example of how not to operate a natural resources management program. It has failed to encourage resource development, failed to provide fair market value to the public and Indian resources and has now left us in a situation where millions of acres have been leased but not mined, leaving us in a very confused state for energy resource planning.

Oil shale development is being pushed despite the fact that it probably is uneconomic at this time and will create tremendous water problems.

5. Specific protective actions taken by the BLM have frequently been lacking. In the Escalante area of southern Utah rather than designating a primitive area which should have been done, the BLM designated it as an "outstanding natural area" which provided little protection outside of the mineral withdrawal. The same exists with the El Malpais outstanding natural area in New Mexico.

In Aravipa Canyon in Arizona, one of BLM's first Primitive Areas designated over six years ago, the upper portion of this unusually beautiful canyon is still badly overgrazed.

Last year Director Berklund supposedly told his state directors to establish one new Primitive Area in each state during that year. None were established.

6. The Bureau of Land Management has been authorizing organized off-the-road vehicle events to take place on the desert with disturbing frequency. These events often involve from 400 to 1,000 vehicles (in some cases, four-wheel vehicles) which traverse courses across fragile desert lands, often near archaeological sites or affecting the habitat of rare desert animals. Moreover, such special use permits have recently been issued which allow races to take place in areas of the desert where there have previously been no organized events.

These races are intensely destructive of the desert's natural beauty and its resources. Often the vehicles traverse the same course three or four times, creating deep scars in the fragile soil of the desert. Equally destructive are the large number of uncontrolled spectators who are attracted to such organized events.

Although, with regard to the largest of such events, the BLM has occasionally prepared a so-called environmental assessment statement, the Bureau ordinarily does not prepare an environmental impact statement in connection with such events and has not acknowledged that it has a legal obligation to do so under the law. Moreover, the Bureau often does not require sufficient surety or bond to indemnify the public against the damage which takes place to the desert. The Bureau will accept the signatures of individuals on such bonds without appropriate inquiry concerning their financial responsibility. Moreover, to our knowledge, there has been only one instance where the Bureau has attempted to recover damages against a race sponsor for damage to public lands.

There is a crying need for Congressional legislation relating to the issuance of special use permits for such organized events. BLM should be required specifically to prepare EIS's for such events prior to the issuance of a permit. Bonds should be furnished only by financially responsible bonding companies, not by individuals. By law, ample time should be furnished to the public to comment on such EIS's before a permit is issued for ORV use only after public hearing regarding the propriety of such designation has been held. Only land which heretofore has been used for such organized events and which does not contain critical desert resources, such as animals, archaeological sites, and so forth, would be appropriate for such designation.

7. One over-looked but extremely important part of the national resource lands are their forested parts, particularly those portions which have commercial forest land. The most important commercial forests on the national resource lands are those under BLM management in western Oregon, in what are known as the "O and C lands," which form a checkerboard pattern of several million acres, from an old revested railroad land grant. These are some of the richest timberlands in the entire nation, and they also have prize scenic, wilderness, recreation, and wildlife characteristics.

Unfortunately, these lands have been managed by the BLM with dominant attention to timber, and very little attention to other values. Severe damage has

been done to other multiple use values, even beyond the normal recreational/aesthetics which are of general concern. Outside foresters who have examined the situation felt that serious over-cutting is now taking place, with the results that, if something is not done, the productivity of the land will be depleted, many people will be out of work, and all other values lost as well.

A few years ago in response to the growing public outcry about such practices, the Administration announced a review of the situation. The Sierra Club, through its experts and foresters, submitted extensive testimony and documentation of the problems in these lands, which we can furnish for the record here if desired. Finally, after much investigation, then-Secretary Hickel announced a reduction in the cut, but it was only a slight reduction—about 100 million board feet a year (out of a total of about 1.3 billion). Much documentation had been submitted to the effect that the cut could properly only be sustained at a level of around 7-900 million, and no more.

We submit that it is imperative that other multiple use values be protected here and on the other commercially forested parts of the national resource lands. It is imperative that over-cutting not be permitted by the Secretary, and that resource depletion like this be halted.

GENERAL DISCUSSION OF ORGANIC ACT PROVISIONS

The national resource lands are vital to our nation, not only because of their vastness, approximately 450 million acres, one-fifth of our nation's total land area, but also because of the diversity and richness of natural resource values found on them. Our nation is dependent on these lands for many environmental and economic benefits—wildlife, watershed, recreation, agricultural, and raw materials. To sustain the flow of benefits from these lands, the highest quality of management—based on conservation principles—is an absolute necessity. These national resource lands must be managed, in such a manner that the integrity of ecosystems and environmental quality is protected, restored and enhanced. This includes the dedication of Wilderness, Wild and Scenic Rivers and natural areas, provision of fish and wildlife habitat, the protection of scientific and archeological values and opportunity and access for outdoor recreation. The principles of multiple use and sustained yield and the tenets of the National Environmental Policy Act should be practiced and firmly adhered to. Good sound environmental management can afford economic uses such as the production of forage, timber, minerals, and allow certain forms of occupancy. But the location of such uses, the manner in which they are done, the degree to which they are done, and the rate at which they are done can make all the difference in the world. The adherence to multiple use, sustained yield, and environmental protection principles will lead to good management decisions—not only for our generation, but for our children and generations to come. To maximize public benefits, the national resource lands must be retained in Federal ownership and management. Only in the most limited of situations where disposal is necessary for proper management of the Federal lands or to allow for growth of existing communities land locked by Federal land ownership patterns, should public lands be disposed of. We feel the Recreation and Public Purposes Act as presently constituted is sufficient to handle most public purposes.

In addition to the problems already addressed regarding the administration of the BLM, the present crisis over our public lands is caused by a number of additional factors which this legislation must address adequately. First, the Bureau of Land Management since the expiration of the Classification and Multiple Use Act in 1970 has been without basic guidance from Congress on long-range objectives for the national resource lands. The time has long since passed for administering our national resource lands under a patchwork of archaic disposal laws and piecemeal reform acts. The Forest Service, on the other hand, has adequate authority to manage the National Forests. In addition to its organic act and the Multiple Use and Sustained Yield Act, it is currently implementing legislation enacted just last year regarding National Forest management policy. Consequently, we firmly believe the Forest Service should be exempt from this legislation unless the national resource lands are transferred to them.

Second, the obsolete disposal laws, including but not limited to Homestead and Desert Entry laws must be repealed. There must not be any special exemp-

tion for Alaska. The new organic act, furthermore, must not open new avenues for disposal with discretionary administrative authorities. Congress must retain its basic constitutional authority over public land disposition. We commend the Subcommittee for including the comprehensive list of repealers in Print #1. We do feel strongly, however, that these repealers must be effective immediately upon enactment. We strongly oppose the provisions in Section 602(a), Section 603(a), Section 604(a), and Section 605(a) of Subcommittee Print #1 delaying the repeal of the homestead, desert entry and small tract acts for ten years, the repeal of certain other disposal laws, certain public land administration laws and certain rights-of-way laws for two years. If not repealed immediately, administrative confusion and public misunderstanding may likely result. Also, in regard to certain disposal laws such as the homestead and desert entry laws, a flood of new applications and tremendous pressure for the approval of such requests may be generated in various areas of the public domain.

Third, the new act must require the Secretary to review all roadless areas of 5,000 acres or more for their suitability for Wilderness designation and require the President to make his Wilderness recommendations to the Congress. While we generally support the Wilderness study provision, Section 312, and commend the Subcommittee for including it in Subcommittee Print #1, we do feel that it does not provide adequate interim protection. We recommend that the language in Section 103 of H.R. 5622 be used instead. The bill drafted by the Administration, H.R. 5224 is woefully weak in this area and totally unsatisfactory. It provides only for the study of areas 50,000 acres or larger—a provision which may just about exempt, for example, most areas in the State of Arizona from being considered if such strict criteria are used. It also does not require that the Congress be advised by the President of his recommendations for such areas, and furthermore, provides no interim protection.

Fourth, the new act must require the filing of all new mining claims with the Federal land management agency. The present system of filing such claims with only the local county courthouse makes it extremely difficult for the managing agency to know of—much less control—the use of the land under its jurisdiction. Subcommittee Print #1 gives this authority to the BLM in Section 207, Recordation of Mining Claims and Abandonment. We strongly endorse this provision.

Fifth, we commend the Subcommittee for excluding the word "permanent" from the definitions of "multiple use" and "sustained yield" in Subcommittee Print #1, as found in earlier bills. These definitions are critical to avoid the problems of overcutting of timber and unnecessary site destruction during timber harvesting operations. H.R. 5224, unfortunately, includes the word "undue" in the "multiple use" definition and the word "permanent" in the "sustained yield" definition. We oppose those definitions as found in H.R. 5224.

Sixth, we object to the Congressional veto power over land-use-planning decisions affecting 100,000 acres or more when one or more uses are excluded (Section 202(e)) and to a somewhat similar Congressional veto power over withdrawals for other purposes involving 5,000 acres or more (Section 204(a)) of Subcommittee Print #1. We have no objection to Congressional review of withdrawals, but we do feel the veto power provision could restrict BLM's land management effectiveness. This process may stimulate conflicts between advocates or beneficiaries of incompatible uses, delaying and perhaps curtailing important public land decisions from being implemented. We believe Congress should maintain an active role in land management through its oversight powers, but not get involved in specific land management decisions unless they are of true significance and then by the consideration of legislation. The Sierra Club is particularly concerned with the repeal of the Secretary's withdrawal powers vis-a-vis the 1872 Mining Act. This archaic law must be reformed to provide for mining through a mineral leasing system with appropriate planning and environmental controls. Yet, until the mining law is reformed, mining withdrawals frequently are an important protection from the desecration of sensitive ecosystems and recreation lands from indiscriminate mining practices. Instead of a Congressional veto process, we recommend instead that the BLM be required to give public notice and hold a public hearing at least 30 days before such decision would become effective for all land classification decisions of 1,280 or more acres. This provision is included in Section 104(d) of H.R. 5622. We endorse it.

Seventh, we recommend that a provision requiring the identification and designation of local units of the national resource lands be included in this legislation. Such designation would greatly facilitate proper and effective management by stimulating a greater sense of geographic specific identity and public interest.

Eighth, we prefer the sales criteria of H.R. 5622 (Section 202) to that of Subcommittee Print #1 (Section 303) because it is somewhat more restrictive in that it limits other "public objectives" in criteria #3 solely orderly growth of existing communities. Furthermore, we do not feel it is necessary to give preference to potential purchasers so long as fair market value is received and competitive bidding provisions of H.R. 5622, which are more restrictive and therefore preferable, to the provisions in Section 203(d) of Subcommittee Print #1. Only in cases to insure proper land management for environmental protection should competitive bidding procedures be waived (Section 205 of H.R. 5622).

Ninth, we believe the BLM should have land acquisition authority with the power of eminent domain comparable to that of the Forest Service which allows condemnation within the boundaries of the National Forests and for access purposes. This authority is important to protect critical environmental areas which may have mixed ownerships and to attain uniform management in specific areas for the production of forage or fiber.

Tenth, we strongly urge the inclusion in the bill of a National Park, Forest, Wildlife Refuge and Wild and Scenic River Study provision (Section 311 of H.R. 5622). There may be a number of significant areas where it would be desirable and appropriate to expand these systems into specific areas of the remaining public domain. Only by conducting such a survey may the necessary identification of significant areas be made and brought to the attention of Congress. Opportunities for such new designations are disappearing with time. So such a study should be done now.

Mr. Chairman, I have not discussed grazing or range management in this statement since I have already submitted a statement to the Subcommittee on that subject.

CALIFORNIA DESERT

The Sierra Club has long been concerned with the preservation of the natural values and the environmental quality of the California Desert. During the past few years our Desert Committee has made extensive investigations of both the resources and problems of the California Desert. We have actively sought the implementation of an interim plan by the Bureau of Land Management to control present indiscriminate use of off-road vehicles and to protect the resources of the California Desert. As I have already indicated, the BLM by and large has not been responsive to our recommendations. Consequently, we support the various California Desert bills pending before this Committee and we commend similar provisions of Subcommittee Print #1 and H.R. 5622.

The urgency is apparent to all those who are familiar with the California Desert. As I described earlier in my statement, the problems have become even more critical because of poor management by the BLM. The existence of this new situation, plus the fact that the Administration is not requesting any new money, makes the passage of these legislative provisions mandatory in order to save the Desert.

It is clear that unregulated, irresponsible use of motorized vehicles has caused a substantial adverse impact on desert lands. A large population of desert tortoises, a totally protected reptile in California, has almost been wiped out by off-road vehicle use in Stoddard Valley. In areas such as Dove Springs and Johnson Valley most plant life and the animal community dependent upon this plant life has been destroyed. Irreplaceable historical sites such as Ivanpah and Woods Wash and archeological sites such as Calico have been vandalized and disturbed until they are no longer historically valid or worthy of scientific investigation. Vehicular noise disturbs desert wildlife as well as human residents and visitors. The few permanent flowing sources of water in the desert such as Afton Canyon and the Amargosa River have been churned up by recreational vehicle users who think of these stream beds as obstacle courses.

We also support Section 403 of Subcommittee Print #1 and Section 310 of H.R. 5622 which provide for the study of other desert areas in the arid West.

We thank you for this opportunity to express our views.

STATEMENT OF CHARLES M. CLUSEN, SIERRA CLUB

Mr. CLUSEN. Because of the very lateness of the hour, I would be happy just to be available for any questions that you have.

Mr. MELCHER. All right.

You have heard our discussion here on the whole grazing section as to discretionary powers of the Secretary in canceling the lease, to use the land the purposes other than grazing, and the permittee or the lessee would have the opportunity for first choice for the permit or the lease if the land remains available for leasing. My question is, does the Sierra Club agree in principle, as the panel members agreed in principle, to that, and see whether we cannot work out the language to accomplish those principles?

Mr. CLUSEN. I think we have some common ground. The only thing that comes to mind to be possibly a problem is that for environmental reasons, the adjacent private landowner may not be the most desirable to have it in a given circumstance. Now, this is probably a rare instance. But if we could work out some language which left some bit of discretion, or probably some better criteria—

Mr. MELCHER. Now, this is in regard to sales, is it not?

Mr. CLUSEN. Yes. I thought that was what you were addressing.

Mr. MELCHER. No. We did discuss sales were the adjacent landowner would have a preference in the sale. But my question goes to the permittee or lessee of the public lands for grazing only. It does not have to be the case, because they are not all adjacent. But in general—does the Sierra Club agree on the principle that if, first of all, it is discretionary with the Secretary on whether or not that land is available for grazing, or should be used for some other public purpose; or the lease should be canceled for any reasons, because of changes in the rules or for any reason dealing with management decisions. Under those conditions, it is the principle of allowing the present permittee or lessee to continue to get that permit or lease, as long as it is available, as long as he follows regulations.

Mr. CLUSEN. Yes, we have no problem with that, except in those cases where there might be a desirable reason for changing its use.

Mr. MELCHER. Oh, sure.

Mr. CLUSEN. And of course, also assuming that the proper number of cattle or sheep may be run, and so forth.

Mr. MELCHER. Well, I think we come close to general agreement on that particular section. This is one of the sections of the bill that has caused us some concern, and has caused a great deal of opposition from various environmental groups. I think maybe we are just dealing with how the language is constructed, and how it is purchased. It needs to be rewritten to reflect clearly what we mean.

Mr. CLUSEN. I might add that we have no desire at all to be contributing to the demise of the family farmer or the small operator. As you well know, we have in recent years found common ground with these people in the strip mining issue, and we have every desire to keep them on the land. We do have some differences when it comes to, maybe, grazing fees or predator control, or things of that sort. However, we do have every desire that the people remain

on the land, and that there is not a basic shift of ownership from individuals or families or partnerships to large corporate interests.

Mr. MELCHER. Well, I think that an alliance has been building over the past 10 or 15 years, simply an alliance of compatible understanding and common goals. I think it is great. I think there has been a better understanding of late. When we decide on issues, we understand how necessary it is to work together. The strip mining bill is an example of that. What was for people in the West a fundamental aspect of the bill, affected other areas also. We found that working together, we were able to have sufficient votes to lock into the bill, now in final form in conference, some of the very needed protections which are very vital to us in the Western States.

Mr. CLUSEN. We have been very appreciative of your strong leadership in this area.

Mr. MELCHER. You have the same problem as the panel had and other environmental groups have had with this question of whether or not Congress should retain in the bill this veto power over land use planning and withdrawals.

Mr. CLUSEN. Mr. Chairman, I might just address that briefly.

Mr. MELCHER. I wish you would.

Mr. CLUSEN. First of all, we have no problem with review. I think the kinds or the types of language which you have in the committee print requiring that these things be reported to you here in the Congress before the fact are all very much called for. We also are strong proponents of congressional oversight. I might also add that I have no authority to change any policy of my organization, but I do believe that we would take a look at the whole withdrawal issue, if you can call it that. If the definition of withdrawal, as we worked along the lines that I think Mr. Shafer was indicating earlier, so that it was not just saying that when you are excluding a certain use, but also including transfers and so forth; and that second, that it would also include the rescinding of existing withdrawals. We do have a significant amount of land in parts of the west that have been withdrawn from money which is our particular concern, so it was a two-way street. And three, that we work out something along the lines we did last year regarding the Antiquities Act, which is sort of a special thing for us. That is sort of the area we started from in National Parks.

I think if we could discuss those areas, there is a possibility of coming up with some common language that maybe we could all agree upon.

Mr. MELCHER. Well, it is true that we are working on that. Possibly we could come up with something with much stronger support than we now have.

I think I have made clear that we are directing the staff to go over H.R. 5622 in comparison with the Subcommittee Print, because much of your testimony points out what Sierra Club believes are the superior points of H.R. 5622. We are very much interested to have the subcommittee review those. I assure you that when we are in markup, we certainly will. However, we are greatly aided in this committee by Mr. Seiberling's presence, and in fact I recruited him—

or attempted to recruit him—to come on to the subcommittee; and it was about his third preference, I think, in subcommittees. And with his duties on the subcommittee of this committee, which were his first two preferences and his duty on the Judiciary Committee, he did not feel that he could devote the proper amount of time to this particular subcommittee. But we will very definitely consider the points that are in H.R. 5622, and also have to justify our actions of another subcommittee to Mr. Seiberling when we reach the full Committee. So we are not going to ignore your views.

It will, however, of course be up to the decision of the subcommittee what language we accept in our final recommendation to the full committee.

I have no further questions. I do want to make one comment on your reference to Alaska. I would say this; that we will look again this year in mark-up as to how this act will affect Alaskan lands. If it does not seem to be appropriate to include specific points that are needed to protect public interests and the vast public lands in Alaska, we will certainly make sure that the committee in other legislation addresses itself specifically to Alaska. I believe that we are scheduled this year to consider legislation on b(2) lands. We should do that in this Congress. Is that correct?

Mr. SHAFER. Yes, sir. We have legislation before us now, Mr. Chairman.

Mr. CLUSEN. I think the one area of this bill that is particularly important now, however, to include Alaska in is the disposal repealers. We believe very strongly that these laws should be dealt with now.

Mr. MELCHER. Rather than holding off?

Mr. CLUSEN. Right. I do not think the legislation for Alaska in any way really conflicts with that situation. If there is a need—and I am not aware of it, really, if there is—for disposal for the lands in Alaska, besides what has already been enacted through the Statehood Act, it would seem to me that that would be addressed in a separate bill at an appropriate time.

Mr. MELCHER. We will take note of the concerns on that. Does the staff have any questions?

Thank you very much. We appreciate your testimony.

Mr. CLUSEN. Thank you.

Mr. MELCHER. The committee is adjourned, subject to the call of the Chair.

[Whereupon, at 1:30 p.m., the subcommittee adjourned, subject to the call of the Chair.]

[Additional information supplied for the record follows:]

THE WILDERNESS SOCIETY,
Washington, D.C., May 16, 1975.

JOHN MELCHER,

Chairman, Subcommittee on Public Lands, House Committee on Interior and Insular Affairs, U.S. Congress, Washington, D.C.

DEAR MR. MELCHER: This letter is in response to your request at the April 11 hearing on the Public Lands Policy Act and related bills for further information

regarding the position of The Wilderness Society on classification and withdrawal procedures in bills under consideration by the Subcommittee on Public Lands. I appreciate your request to provide the Committee with further information and apologize for the slowness in responding to that request.

The Wilderness Society has long supported the authorities of the Secretary of the Interior to withdraw lands from the public domain for certain purposes and for retention, in the public interest, of specific values. We have also supported the classification program of the Bureau of Land Management. However, that policy has changed because of our support for H.R. 5622 which, in part, establishes a National Resource Land System and identifies local units by name. In our view, this approach would give the lands more identity in the public mind and thereby create long-term public involvement in multiple-use management programs. It also would provide the agency with means to request and defend budgets and personnel on a more planned and systematic basis. In other words, we are suggesting, in H.R. 5622, that the national resources lands, or the public domain, be established much like the national forests have been established by Executive Order and law over the years. Some units of the National Park and National Wildlife Refuge Systems have been established similarly. Inclusion of this kind of direction in the Public Lands Policy Act would, in our view, largely eliminate the need for broad classification and withdrawal authorities. Of course, for areas of less than 5,000 acres the authorities would continue.

We feel that, in order to provide long-term and lasting benefits to the public, once the boundaries of an area have been identified and selected and a proposal developed by the Bureau of Land Management, after full public participation, the proposed classification should be sent to Congress for approval much the same as national forests and national parks are established now. We believe that this is the only way in which the areas so identified can be properly managed in the future. The process involved in this approach would go something like this:

1. The agency would identify an area; develop a planning system and inventory the unit; determine its management programs and establish needs and priorities for accomplishment; identify wilderness areas (if they should be present in accordance with the standards set by the Wilderness Act); and submit the whole package to the Congress for approval.

2. The entire unit would receive statutory designation, including the wilderness. Uses could similarly be treated depending on the national benefits to be derived therefrom.

As part of the process, the Secretary could withdraw the area until such time as the Congress acted upon it. Once the Congress acted upon the unit, the Secretary's withdrawal authorities would no longer be needed and thus, could be rescinded on unit by unit basis.

It is not clear at this point whether the Committee has seriously considered another option. We have proposed the creation of a separate agency to handle the energy functions of the federal government including those on the public lands. We think this is badly needed and should be an important part of this bill. We propose a basic reorganization of the existing Bureau of Land Management to achieve this end. Included in this option should be a study to determine whether *all* of the national resource lands could be incorporated into existing land management systems. That is, an area containing high archaeological, recreational or natural value would be included in the National Park System; an area having high wildlife values could be included in the National Wildlife Refuge System; and grasslands and timber lands would be incorporated in the National Forest System. In this way, the expertise of existing land management systems could be brought into the overall picture and unnecessary duplication of budget and manpower would be avoided. In summary, only energy functions would remain under the purview of the present agency, and all other activities would be transferred elsewhere.

Again, thank you for requesting our views on this important subject.

Sincerely yours,

HARRY B. CRANDELL,
Director of Wilderness Reviews.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C. May 5, 1975.

HON. JOHN MELCHER,
*Chairman, Subcommittee on Public Lands, House Committee on Interior and
Insular Affairs, U.S. Congress, Washington, D.C.*

DEAR JOHN: I understand your mark-up on the Organic Act is approaching sections in which I'm deeply interested.

We have covered the ground before on the desert entry program, both in my testimony before your Subcommittee last year and in private conversations. This letter is simply to remind you that my interest and concern has not diminished. Continuation of the desert entry program is essential to Idaho and many of the western States. At a time when we are struggling to feed our own population and make a meaningful contribution to less productive nations in the world, development of additional farm acreage is vital.

You will remember that my preference was to perpetuate the program. I recognize your Subcommittee is not in full agreement with my position and was pleased that the compromise which now serves as language for Title VI, Section 602, was adopted. I am told, though, that language has been prepared for amendment this year which would grandfather in existing applications and discontinue further applications. I strongly oppose such a move.

The desert entry program is active in few States. Where it does continue to benefit our national economy by expanding the agricultural base, federal ownership of lands within those State boundaries is consistently high—better than two-thirds the land base in Idaho's case. It makes sense to me to move these lands off the public rolls and into production.

I would also like to offer a word of support to language to be offered by Jim Santini as amendments to the police powers section of your bill. I recognize your effort to address a legitimate problem on the public lands, but further extension of federal police powers will never be accepted in a State like Idaho; nor would I guess such a move to gain much popularity in your own State. These people cherish the concept of local police powers, and I believe matters such as this should be handled at the local level to whatever extent possible. The Santini language is an excellent approach.

Thank you for your time and attention.

Your for a free society,

STEVE SYMMS,
Member of Congress.

NATIONAL AUDUBON SOCIETY,
Washington, D.C., March 25, 1975.

CONGRESSMAN JOHN MELCHER,
*Chairman, Subcommittee on Public Lands, House Interior Committee, Wash-
ington, D.C.*

DEAR CONGRESSMAN MELCHER: For many years, conservationists have decried the condition of the public lands and pointed to improper grazing as one of a number of activities contributing to the deterioration of the public domain.

Recent reports by the Bureau of Land Management (Range Condition Report prepared by the Bureau at the request of the Senate Appropriations Committee, and "Effects of Livestock Grazing on Wildlife, Watershed, Recreation and Other Resource Values in Nevada") have documented these charges and revealed that 83% of the range is in fair, poor, or bad condition.

The effect of poor grazing management has been especially severe on wildlife, and the quality of wildlife habitat is continuing to decline. The wildlife resources of the public lands are enormous, but are given short shrift compared to other uses. Thirty-three endangered species are found on BLM land, but less than one cent per acre is spent by BLM on all wildlife. The average area of responsibility for each professional biologist is seven million acres. Between 1968-1973, the following increases in amount of unsatisfactory habitat occurred:

	Percent of unsatisfactory habitat	
	1968	1973
Big game.....	38	41
Small game.....	21	38
Waterfowl.....	14	37
Streams.....	30	41

We do not believe that a statutory grazing fee, such as proposed in the committee print, will solve this and other problems on the BLM lands. Certainly more funds and personnel are needed, and present grazing fees are nowhere near fair market value of grazing on private land. However, improved management practices based on true multiple use—which has not been the case in the past—are just as important as the actual fee. It is impossible to predict how the statutory fee and new formula will actually work, although it appears that fees could vary widely depending upon the fluctuating price of beef.

We strongly object to the mandatory issuance of 10-year permits and their automatic renewal. The length of the permit should be discretionary, and the Taylor Grazing Act already gives the Secretary discretion to issue permits for 10 years. The language of subsection (f) gives a vested right to the permittee which we adamantly oppose, because the land belongs to the public.

We also oppose Section 212 which would exempt grazing district advisory boards from section 14 of the Federal Advisory Committee Act. Clearly this exemption will only perpetuate the narrow focus of district boards which is in part responsible for some of the problems on the public lands. If district boards are to be continued at all, and we seriously question whether they should, their membership should reflect a balance of all the interests in the public lands instead of the token public representation which is now the case.

Sincerely,

CYNTHIA E. WILSON,
Washington, D.C., March 26, 1975.

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C. March 26, 1975.

HON. JOHN MELCHER,
Chairman, Subcommittee on Public Lands, House Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the more than two million Farm Bureau member families in forty-nine states and Puerto Rico, we take this opportunity to express our views on the Public Land Policy and Management Act of 1975, Subcommittee Print No. 1, dated March 18, 1975.

The status of public lands and their management has long been an item of special concern to Farm Bureau members, especially in the western states. It is, therefore, not unusual that the organization's policy statement, developed at the county, state, and national levels, covers this issue thoroughly.

As a matter of general policy, we believe that private ownership and operation of the major portion of a state's land surface is in the state's interest. Therefore, we feel that the federal government should grant the public land states equality of statehood by transferring ownership of all lands under the control of the Bureau of Land Management to the states in which such lands are located.

Pending such a transfer, we favor the multiple use of federal lands and feel that the proposal now before the Committee is a step in the right direction with regard to management of the National Resource lands.

We commend the Committee for the efforts that have been made to seek user input into this bill and hope that this process will continue. Therefore, we believe it is vital that certain guidelines be written into the law and that periodic oversight be provided through the authorization process for agency funds.

We believe that acquisition of land or withdrawals for restricted uses should be made only with Congressional authorization. Any procedure short of Congressional review leaves the decision to administrative whim with very little or no public opportunity for input.

The development of maximum productivity on the National Resource lands is clearly in the national interest with regard to food and fiber production and is especially vital to the local economies where the public lands are located. We believe increased productivity for all multiple uses can best be attained through long term contracts with grazing users so that needed investments and improvements can be made.

We believe contractual agreements should provide, among other conditions:

- (a) An adequate and reasonable term of years.
- (b) Opportunity for personal capital investment in range improvements and operation facilities.
- (c) Conditions relative to multiple use including hunting, fishing, and recreation.
- (d) An appeal procedure.
- (e) An equitable fee structure including the capital investment in a permit as a factor in annual operating costs.
- (f) Severance damages.
- (g) Trespass regulations.
- (h) That the permittee shall be granted an equitable share of the increased grazing capability which accrues from improved range management.
- (i) That the price of marketable livestock and costs of doing business should be included in the grazing fee formula.

We are opposed to the mandatory minimum fee of \$2.00 per animal unit month. We favor the continuation of grazing advisory boards to the Bureau of Land Management. These boards should be authorized specifically by this legislation and should be used even if multiple use committees are established.

We believe that Congress has the responsibility to establish guidelines for the management of the National Resource lands as long as they are in federal ownership, and we believe that these guidelines should provide a clear direction toward full multiple use utilization.

We respectfully request that this letter be made a part of the record of the hearing held by your subcommittee on March 25, 1975.

Sincerely,

JOHN C. DATT,
Director, Congressional Relations.

MONTANA ASSOCIATION OF STATE GRAZING DISTRICTS,
Helena, Mont., March 31, 1975.

Congressman JOHN MELCHER,
*Longworth House Office Building,
Washington, D.C.*

DEAR JOHN: In response to your request during our visit in Washington, D.C., I am enclosing a letter written by Russel Unruh of the North Fork Grazing District. I believe Russel reflects some of the thinking of the Grazing District Directors.

I would certainly like to thank you on behalf of the Montana Association of Conservation Districts for the courtesies extended to us during our trip. We always find it such a pleasure to work with your staff and especially with you.

Thank you again.

Yours very truly,

PETER V. JACKSON,
Executive Secretary.

NORTH FORK GRAZING DISTRICT,
Chinook, Mont., March 10, 1975.

O. M. UELAND,
*Administrator, Conservation District Division
Helena, Mont.*

DEAR OLE: These are some of my views on the uses of Federally owned lands and the Advisory Boards to the administration of them.

Through the years, the American public has been made increasingly aware of the fact that they are part owners of the public lands and in this atmosphere a new breed has been born. They are called environmentalists. I don't think anyone can dispute their philosophy but, in my opinion, their methods sometimes leave a lot to be desired.

Some of their proposals and accusations make about as much sense to me as sitting down under a bull with a milk pail.

For instance, the Natural Resource Defense Council has accused the American Cattlemen of abusing the public lands by over-grazing thereby cruelly starving the wildlife. Other environmental groups have accused the rancher of abusing public lands to the extent of wrecking wildlife habitats, increasing erosion, causing sedimentation in our streams, and—believe it or not—even killing the fish. Some of these groups have proposed that all grazing of public lands be decreased or terminated. When you stop to consider that almost half of the land area in all eleven western states is federally owned, and livestock graze on approximately 73 per cent of this land, these kind of proposals scare a rancher a little.

Being a rancher who has paid for grazing privileges on some of these public lands for the last 20 years these accusations and proposals disturb me greatly for the following reasons:

(1) The Livestock Industry is in serious trouble. In fact we are in more trouble financially than back in the 30's. If grazing on public lands is decreased or lost completely, many ranchers would be forced out of business.

(2) Due to the fact that feed costs are too high to warrant long-term finishing of livestock in feed lots, grasslands are becoming more and more important. If grazing privileges on public lands are decreased or lost, it would have a detrimental effect on the economy because there would be less red meat and eventually higher consumer costs.

Let's reflect for a moment on the past history of some of our public lands. In our area most of the public lands were acquired by the Federal government when many homesteaders went broke and just up and left.

There was a time when these lands had no management. Back in the mid 30's the Taylor Grazing Act made possible the formation of State Grazing Districts which served as a vehicle to manage these lands in conjunction with the Forest Service, and later the Bureau of Land Management.

These cooperative State Grazing Districts were formed at local levels and run by local ranchers. Ranchers within the Grazing Districts were allotted AUMs of grazing on Federal Lands according to their ability of taking care of their A.U.'s during the winter when there was no grazing. This arrangement worked quite well, and in most cases the condition of these public lands have been maintained or improved. In our area, the ranchers' lands are intermingled with public lands, consequently what happens to public lands affects the ranchers' livelihood.

Over the years, with assistance of the Soil Conservation Service, county agents and just plain common sense, the rancher has increased the grazing condition of his lands. The Bureau of Land Management has also been engaged in range improvement programs.

Some of these improvements have been pasture renovation and reseeding, stock water development, cross fencing, rest rotation, etc. In many instances the grazing capacity has been doubled and even tripled and *when the forage is increased, the wildlife naturally increase*, erosion is decreased, etc.

Instead of proposing that the grazing of public lands be decreased or stopped altogether, I think the American public would be best served by a good program to increase the grazing capacity of these public lands.

The American public would benefit greatly from this type of policy. They would gain by decreased consumer costs of feed, meat, and wool, increased wildlife habitats and more revenue from ranchers paying for additional AUMs.

I feel that the next year or so is a very critical time with respect to the future uses of Federally owned lands. The reason is the fact that a law is being written to replace the Taylor Grazing Act, and as I understand it, it will replace a lot of other laws influencing Federally owned lands. It is called the Organic Act. Just how this Act is written and amended will greatly affect the livelihood of the stockman or any other public land user.

I would like to offer a few suggestions that I think would add to a more harmonious relationship between the Federal government and the public land users.

Although this might be a hazardous approach, I think these public lands should be categorized as to their uses, and a primary use for areas of these lands should be established. In the process of determining the primary purpose for these public lands every effort should be made to utilize input from local groups, such as the Conservation Districts, the County Agents, the Local

Grazing Districts, etc. If the primary purpose for an area of public lands was determined to be grazing, the other interests would become secondary. The most effort in this case should be directed toward the enhancement of the grazing capability, and as a result, wildlife and other values would also increase.

I am strongly in favor of advisory boards to the Federal agency administering the public lands. In the forgoing example, the advisory board for this area should be chosen by local people for this reason: Range conditions vary from ranch to ranch, area to area, and from region to region. When a set of policies are set up at a regional level, many times they do not fit an area or local level.

There has to be flexibility involved. With input from a local level, these policies can be molded to fit the area.

Members of this area's advisory board should be picked from local organizations and agencies such as the Soil Conservation Service, State Grazing Districts, Local County Agents, range technicians, local ranchers, etc. and should be chosen by the members of the organizations themselves.

These advisory boards should have real purpose in policy shaping for the area involved. They should be proportionally chosen with respect to their ability regarding the primary purpose of the public lands involved. I also think that in the case of a public land area where the primary purpose is grazing, a certain per cent of the grazing fee should be set aside for rangeland development and made available to the permit holder.

There should also be some way to promote rangeland development on public lands within an operators unit in conjunction with A.S.C. cost sharing programs, whereby technical assistance could be obtained from the local Soil Conservation Service and other local agencies.

To summarize:

(1) Ranchers as a whole are maintaining the Federal lands within their units and in many cases are improving their condition.

(2) The need is to increase the grazing capacity of Federally owned lands not to decrease it or stop it completely.

(3) Advisory boards should be retained in much the same capacity as they were under the Taylor Grazing Act, but should be given real purpose as to shaping Federal lands policy.

(4) The members of the area advisory boards should be chosen from local organizations and agencies and in proportion to the primary use established for the public lands in the area. They should be chosen by the members of these organizations themselves.

(5) A certain per cent of the grazing fees should be returned to the permit holder for use in rangeland development on the public lands he uses.

(6) Rangeland development should be promoted on public lands within an operators Unit in conjunction with A.S.C. cost sharing payments whereby technical assistance can be obtained from the local Soil Conservation Service and other local agencies.

(7) If grazing is decreased or stopped altogether on public lands, the result would be chaos to many ranchers involved and the public lands would become a burden on the American taxpayer.

I think what I'm trying to say is that the Federally owned lands should be administrated much like they are under the Taylor Grazing Act, but with an all out program to enhance the primary uses established from local input in the areas involved. I think that if this approach is used, the revenue from these lands, as well as other benefits to the American public, would be greatly increased.

Sincerely,

RUSSELL S. UNRUH,
President.

SOUTHERN PACIFIC TRANSPORTATION CO.,
Washington, D.C., April 7, 1975.

Hon. JOHN MELCHER,
Chairman, Subcommittee on Public Lands (Interior and Insular Affairs), U.S. House of Representatives, Washington, D.C.

DEAR MR. MELCHER: Title V (Rights-of-Way) of Public Land Policy and Management Act, Print No. 1, March 18, 1975, is of some concern to Southern Pacific Transportation Company in that it calls for rights-of-way to be granted

across national resource lands by the Secretary for fair market value (Section 504(f)). While we can understand the logic of that position, it is important that the Secretary have sufficient flexibility to grant railroads equivalent rights to those they have today in connection with changes in alignment of existing railroads. Line changes most frequently occur either to improve the efficiency of railroad operations or to accommodate a third party such as in construction of highways. Line changes of this nature, in effect, amount to an exchange of property whereby some existing right-of-way is relinquished and the railroad facilities are relocated upon the new right-of-way. This is a recurring situation which should be encouraged rather than obstructed by the provisions of any new legislation. To permit this type of exchange, we suggest that the following language be added to Section 509 on page 69 of the Subcommittee Print No. 1:

Notwithstanding anything to the contrary in this title, the Secretary is authorized to grant a right-of-way, without charge, for a railroad and appurtenant communication facilities through and upon national resource lands for the purpose of a change of alignment of an existing railroad. The interest in, the width of, and the conditions affecting the right-of-way shall be the same as in the case of the original grant by Congress of the right-of-way for the portion of the railroad to be realigned; provided, the portion of the right-of-way occupying national resource lands no longer required for maintenance and operation of the railroad shall be relinquished to the United States; provided further, a map shall be filed with and for approval by the Secretary by the railroad proposing to make the change of alignment, showing thereon the location and width of the right-of-way through national resource lands required for the change of alignment and the portion of the existing right-of-way occupying national resource land to be relinquished in connection with the change of alignment.

We would be pleased to discuss the suggested amendment with you or your staff at any time, and we request this letter be made a part of the record of the hearings in this matter.

Sincerely,

WILLIAM R. DENTON,
Vice President.

INDUSTRIAL FORESTRY ASSOCIATION,
Portland, Oreg., April 16, 1975.

HON. JOHN MELCHER,
Chairman, Subcommittee on Public Lands, House Committee on Interior and Insular Affairs, House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Inasmuch as we were unable to be present and appear before your Subcommittee last week when you were holding Hearings on Subcommittee Print No. 1, entitled "Public Land Policy and Management Act," dated March 18, 1975, we would like to make a few comments thereon by these means.

You may remember that I appeared before you at Medford, Oregon on H.R. 5441 on March 29, 1974 and made a number of suggestions for the modification of the then pending Bill.

To establish our interest in the subject of Subcommittee Print No. 1 and the land administered by the Bureau of Land Management, please let me tell you that Industry Forestry Association consists of 116 companies and individuals in the business of growing and harvesting timber and manufacturing lumber, pulp and paper, plywood and veneer, shingles and shakes, hard and soft boards, poles and piling, doors, furniture and other forest products. Our members operate more than 400 wood processing plants and conduct more than 200 different logging operations in our Region. They employ 90,000 people. The annual payroll of their employees is nearly \$1 billion. Our Membership owns more than two million acres of forestlands intermingled with the O & C and Coos Bay Wagon Road Grant Lands in Western Oregon and purchases varying amounts, between 25 and 40 per cent, of the total timber offered for public sale from these lands every year.

Generally, the proposal for a "BLM Organic Act," which is intended by Subcommittee Print No. 1, meets wide public acceptance because it is obviously an attempt to consolidate, in one basic statute, various authorities and responsibilities of the Secretary of the Interior which are now widely separated in the United States Code.

We would like to address ourselves to a few items other than Title V and propose some suggestions for language modification and then confine the rest of our Statement to Title V.

We wonder about the term "areas of critical environmental concern" in Sec. 103(a), lines 14 and 15, page 6. We believe that if forest and related lands were left unprotected and unmanaged because of designation by the Secretary as "areas of critical environmental concern," just setting them aside by designation, in our opinion, is not enough. They should be protected and managed.

To make certain that the rest of the Bill relates to it as appropriate, we suggest insertion in Sec. 202(f)(1), after the word "leases" on line 16, page 12, the phrase "grants of easements."

In Sec 202(f)(2) we suggest insertion of the phrase "grants of easements" following the word "lease" on line 10, page 13.

The foregoing recommendations for insertion of the phrase "grants of easements" will be consistent with the definition in Sec. 103(f) which sets forth "easement" as the first definition of "right-of-way" (line 12, page 8).

With reference to Title V, we wonder why it includes the national forests when the Secretary of Agriculture is already authorized, under Public Law 88-657 (16 U.S.C. 533 and 534) to exchange easements and to enter into share-cost road agreements with intermingled non-Federal landowners.

We also believe that it would be appropriate in Title V to add a new Section, probably between present Secs. 501 and 502, which would authorize and direct the Secretary of the Interior to enter into agreements which would grant easements for forest protection and management of intermingled or adjacent non-Federal lands. We would suggest language similar to that contained in Public Law 88-657 referred to above, which reads as follows:

"The Secretary (of Agriculture) is authorized, under such regulations as he may prescribe, subject to the provisions of this Act, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way (1) over national forest lands and other lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.

"An easement granted under this Act may be terminated by consent of the owner of the easement, by condemnation, or after a five-year period of nonuse the Secretary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within sixty days after receipt of the notice, a hearing in accordance with such rules and regulations as may be issued by the Secretary."

Substitute "Interior" for "Agriculture," "BLM" for "Forest Service" and "national resource" for "national forest" for applicability to the Department of the Interior.

Thus the authority for the Secretary of the Interior and the Secretary of Agriculture, with respect to exchanges of rights-of-way and road use, would be consistent even though in separate legislation for each Department.

We don't understand the reason for including the burdensome disclosure provisions contained in Sec 501(b), (1) and (2). It doesn't seem to us that such should be applicable to right-of-way granted over national resource lands for forest protection and management of intermingled or adjacent non-Federal lands.

We were delighted to see the provision in Sec. 502 of an authorization for the Secretary of the Interior to enter into cost-share road agreements with intermingled non-Federal landowners. This will facilitate the exchange of rights-of-way and road use in the intermingled forest land ownership pattern here in the West. The necessity of cooperation between the Government and intermingled owners is obvious when it is realized that without it there could be thousands of miles of duplicating roads, difficulties in obtaining access on both the part of the Government and intermingled owners and undue complication in the protection and management of the total land area on which our economy heavily depends. Precluding unnecessary duplicating roads also offers the bonuses of less environmental impact and improved access at less cost to everyone.

In Sec. 504(a) the word "practicable" in line 23 and 24, page 62, needs clear definition. We would suggest that following the word "as" in line 23 the sentence be concluded by adding "may be indicated by the proportionate values involved."

What is being sought here, apparently, is to do no more surveying than indicated by the circumstances.

Sec. 505 directs the Secretary, in connection with the grant of a specific right-of-way, to condition it in accordance with applicable air and water quality standards and to prevent damage to the environment, property and public health and safety. Any such requirement would be applicable to every right-of-way granted irrespective of when it was granted. Because of unknown and possible future changes in requirements, this could mean substantially increased costs to the grantee. So, the only way to assure equitable treatment would be to recognize and provide for a compensable interest.

In this connection we would also raise the question as to whether the National Environmental Policy Act doesn't take care of the substance of Sec. 505 because, if any activities are considered "significant," they should be studied, but, if not, then the activity should be allowed to proceed expeditiously.

This concludes the suggestions that we have to make, Mr. Chairman, and we would appreciate it greatly if you would make this letter a part of your Hearing Record on the subject. Thanking you for your consideration, I am,

Very truly yours,

W. D. HAGENSTEIN,
Executive Vice President.

MONTANA ASSOCIATION OF STATE GRAZING DISTRICTS,
Malta, Mont., May 8, 1975.

HON. JOHN MELCHER,
*Representative of Montana, U.S. House of Representatives,
Washington, D.C.*

DEAR SIR: Being public land users we are very much interested in anything effecting the future of these public lands. We would like to offer some of our thoughts concerning S-507.

1. We think the district advisory boards should be retained with all user segments providing their own representatives, and with all the multiple uses in each individual district being equitably and fairly represented.

2. With the increased use of public land for hunting and fishing it may become necessary in the future to regulate this segment the same as any other multiple use.

3. Concerning sales or trades of national resource lands, we think all parties involved be allowed their own appraisers and compromise arrived at from these appraisals. Because of the difference in what constitutes a family sized farm, we think this term should not be used in size of tract criteria.

4. We think the use of eminent domain to secure access to public lands should be used only when every other method has been tried.

5. For purposes of enforcing laws or regulatings pertaining to national resource lands, we feel that there are numerous law enforcement agencies, with personnel trained for no other purpose, that should be used for this.

6. Fees for grazing on national resource lands should be regulated by the price of livestock and the monies from these fees be retained and used for range improvements on national resource lands in the district where collected.

Sincerely yours,

HENRY NESBIT.
President.

STATEMENT OF THE AMERICAN PETROLEUM INSTITUTE

Improved management of our public lands and their resources is necessary to help alleviate this nation's energy supply problems. Land is the principal source of energy and many of our remaining energy resources lie beneath the public lands. It must be recognized that it is in the best interests of the American consumer that access be permitted to these important reserves, both now and in the future. To accomplish this end, the government should continue to provide the legal stability, which industry requires in order to make prudent investment decisions, and the administrative procedures that will permit oil, gas and other mineral exploration and development activities to be carried on along with other uses of the land and its resources under the sound and long-standing principle of multiple use.

The American Petroleum Institute believes that the unnumbered subcommittee print of March 18, 1975, the "Public Land Policy and Management Act," makes some positive contributions toward these ends. However, certain sections of the bill require further amendment if the legislation is to be truly responsive to the energy needs of the American people.

Those sections of the bill which deserve wide-spread support are the Declaration of Policy and those sections which provide for an inventory of public land resources, public land management on the basis of multiple use, better control over executive withdrawals of land from multiple usage, and implementation of the Mining and Minerals Policy Act of 1970 as it pertains to the public lands. Spokesmen for the petroleum industry have urged for many years that public lands be administered according to the principle of multiple use. Section 202 of this bill, in requiring public land use plans and public land management to observe the principles of multiple use and sustained yield and providing Congressional control over exclusions of one or more uses, is in line with these recommendations. Furthermore, the definition of multiple use in Section 303(c) specifically recognizes minerals as an important resource to be considered in managing the public lands to "meet the present and future needs of the American people."

Section 204 provides the Congressional control over executive withdrawals of lands from multiple use that was recommended by the Public Land Law Review Commission and endorsed by the American Petroleum Institute, the Mid-Continent Oil and Gas Association, the Rocky Mountain Oil and Gas Association, the Western Oil and Gas Association, and other industry organizations. We would recommend, however, that this section be amended to require assessment of current and prospective natural resource uses for *all* lands withdrawn from multiple use. (As presently written, Section 204(b)(2)(B) requires an "inventory and evaluation of the current natural resource uses" only in the case of emergency withdrawals.) Furthermore, Section 311 should be amended to require the Secretary to list all lands withdrawn during the year in his annual report to Congress, explicitly setting out all mineral reserves, including energy resources, which have been withdrawn. These amendments would help assure that withdrawals are made on the basis of an intelligent evaluation of all the information that can be obtained with respect to the land and values involved.

Other amendments which the Institute feels are necessary to accomplish the purposes intended by this legislation include the following:

1. *Sections 102(a)(11) and 202(f)(2)*, authorize revocation or suspension of permits, licenses and leases upon final administrative finding of a violation of regulations issued by the Secretary or of applicable State or Federal air or water quality standard or implementation plans. This might be an appropriate penalty in cases of frequent and deliberate violation of laws and regulations. However, in view of the penalties provided for violations of State and Federal air and water quality regulations, for example, such a harsh penalty as these sections would provide for even a single unintentional incident would serve as a substantial disincentive to develop the resources of the properties under lease. Considering our current energy supply problems, this is not an appropriate time to inhibit energy industry investment.

2. The Institute recommends that a new item be included in *Section 202(b)*, regarding the development of land use plans which would call upon the Secretary to: "consider the nation's requirements for a continuous and reliable supply of energy resources for national security and economic well-being."

This addition would reinforce Congress's concern for the nation's security, including its economic well-being.

3. *Section 203(b)* prohibits the Secretary from making conveyance of public land "which would be in conflict with State and Local land use plans, programs, zoning and regulations." It further requires the Secretary to notify the Governor and heads of political subdivisions within which the land is located sixty days prior to offering the land for sale or other conveyance in order to afford them an opportunity for the adoption of zoning or other regulations concerning the use of such land prior to its sale.

Although we believe the Secretary should be required to give careful consideration to the consistency of the use contemplated by a proposed disposition of Federal lands with State and local land use plans, we do not feel it is desirable to provide for what is tantamount to a veto power by local government units over the future use of such lands.

The national energy shortage may require, in the overall national interest, the development of such lands for the production of oil, gas and other minerals even though groups with local orientations may oppose such developments of refining and electric generating sites.

Accordingly, the Institute urges that Section 203(h) be amended to read as follows:

"(h) The Secretary shall not make conveyances of public lands which would be in conflict with State and local land use plans, programs, zoning, and regulations unless such sales are required by the overall national interest."

This amendment would provide a mechanism to insure that the national interest is protected in all conveyances of Federal lands.

PRESENTATION TO THE STATEWIDE NATURAL RESOURCES COMMITTEE, CALIFORNIA CHAMBER OF COMMERCE, SACRAMENTO, CALIF., BY W. F. HERBERT, MANAGER, NATURAL RESOURCES, SOUTHERN PACIFIC LAND CO.

I want to tell you about the magnitude of the problems of "Private—Public Land Exchanges": explain why it is of concern to California Business and the general public; give some reasons why the program is moving so slowly; and say what should be done and where you in the Chamber can be an important link in the program.

The magnitude of the exchange problem can be better visualized with a few facts. The acres and money mentioned will only be Southern Pacific Land Company properties, but other landowners face the same type situation. Because the agenda today is generally concerned with Forest lands, I will concentrate on exchanges with the United States Forest Service in northern California; however, the same problem exists on hundreds of thousands of acres with the Bureau of Land Management in southern California and with other governmental agencies throughout the state.

In northern California, Southern Pacific Land Company has 213,000 acres of its property withheld from use currently in wilderness, primitive, scenic, special study and roadless designations. Studies are being made by the Forest Service, and some have been in progress over twenty years. Our company long ago determined which of its land is most suitable for continuous timber production, recreational use, to remain unused and pristine, commercially developable or better suited for others to own. Some of the exchange property should be consolidated for better management. Much of it is more suitable for government ownership and is truly unique, located in areas that should remain pristine. We have had numerous meetings and correspondence with local and regional Forest Service personnel, and they have indicated the desire for its acquisition. This property is costing us a great deal of money while the studies are being made, and this year the property taxes alone cost us over \$506,000 on the 213,000 acres of exchange property. This does not include our overhead expense or the return that should be coming in from the value of the property.

For example, Southern Pacific Land Company property is located in the following areas where we have refrained from putting the land to its highest income-producing potential in anticipation of the Forest Service is going to acquire it: Approximately 3,800 acres are located within the Lake Tahoe basin; 10,100 acres are within the Granite Chief special study and roadless area; 53,000 acres are within the Salmon-Trinity Alps primitive area; 7,000 acres are within the Shasta Lake recreation area; 8,900 acres are within the Clair Engle Lake recreation area; 11,500 acres are within the Grouse Ridge Lakes basin area; and so on. These are the more obvious exchange potentials, and do not include the thousands of acres where ownership should be adjusted to facilitate survey management and other problems.

Why is this of concern to California Business and the general public?

This unique property is available now for the government's acquisition to be kept pristine for the public's enjoyment, but this opportunity may soon be lost forever. Private owners cannot continue to hold property in a nonproductive condition and continue to pay the heavily increasing tax burden while waiting for the Forest Service to complete its studies and decide on exchanges. The property is going to be sold to others with differing land management policies or put to another use that produces income.

Imagine the adverse impact on the present open space and environment if you have many hundreds of property owners of the timber and scenic lands instead of a few.

We favor the Forest Service's acquiring property through exchange. There are many locations where it would be to the mutual benefit of private owners and the government to consolidate its holdings into logical management units or for private firms to acquire government land lying in urban areas that logically is suitable for development and other commercial use.

It is important to define the government's responsibility and the private sector's responsibility. The government should own the unique scenic lands that have a special value and are to be preserved for the public's enjoyment. The private sector should own the commercial and developable lands at it is in its proper role and area of responsibility, supplying the venture capital and taking the risk of success.

There are other benefits to the program, such as greatly needed winter and summer vacation resorts, with adequate lodging, eating and recreation facilities, which would be built on private land in the proper areas. This is in contrast to the typical automobile-congested weekend oriented resort on government land here in California. Unfortunately, adequate financing of buildings and utilities is difficult on government property, and other government restrictions prevent the flexibility needed to assure a successful operation on its lands.

There is much timber land that is withheld from use that properly should be logged on a continuous forest production basis. This timber is locked in areas that obviously are suitable for logging while endless studies are made restricting its use.

I have deemphasized the Forest Service's acquiring more land through purchase as it should concentrate on the quality of its land management operation and remain in its role of responsibility. I personally feel that a better contribution to society can be made through private ownership of property whenever possible. There are thousands of acres of government land in locations where it should not have ownership and which should be used for exchange. Exchange has the benefit of not upsetting the county's tax base as an equal value of property can be exchanged within the county with the private owner's continuing to pay the same taxes.

Even though after many years of effort, we recently concluded a 1,600-acre exchange with the Forest Service, and conditions are improving with other exchanges in various stages of progress, the program, for all practical purposes, is moving too slow to be of any real significance. At the present rate, it will be 100 years before we complete our program with the Forest Service, and this doesn't include other private land which should also be exchanged.

Now, if this program to exchange private—government lands is so logical, and there are benefits to each party, why isn't the program moving faster and being more actively pursued?

We have been given reasons, such as: there are not enough funds available for appraisals; the conservation groups may object to the Forest Service's giving up any of its land; the off-road vehicle groups may object to the Forest Service's giving up any of its land; the timber industry may object; others may object; the Forest Service may be accused of favoritism; the Chief at Washington has not set the policy; even though the past supervisor recommended an exchange after taking three years to study, he was promoted to another location and the new man needs to make another study; small area exchanges can't progress as the total picture has to be studied first; however, it has not been determined if the total picture is by drainage area, by county, by district, by region, by state, etc.; the Forest Service requires plans and reports for its approval on uses the private party intends to make of the Forest Service property to be exchanged; the Forest Service doesn't want to exchange away commercial timber land, release recreation land, release developable land, and so on; there has to be a trade off, and it has not been determined what will the government allow the private party to acquire in exchange for the wilderness and scenic lands; the local District Forest appears to be waiting for direction from the Region; the Region appears to be waiting for a policy decision from the Forest Chief at Washington, D.C.; and the Chief appears to be waiting for recommendations back from the local District.

These are just a few of the reasons why the exchange program is moving so slowly. I believe the benefits to all are so important, and too much can be lost by further delays, so that we should not accept this status quo—custodial situation.

Its unexplainable why the governmental agencies are not responding actively to the public's desire to protect the truly unique properties and why they are

not taking the initiative to rapidly acquire them while the properties are so readily available.

What should be done and where does this organization have a role?

I feel the major problem is at the highest level of the various governmental organizations. What is needed is a clear program for the regions and districts to follow. The Chief of the Forest Service should give his approval to the exchange program originally, and sufficient approval of funds so the Region will have better assurance the exchange will be accepted if the properties to be exchanged and acquired are of equal value.

A disposal criteria should be established, setting the proper priorities defining the lands the government should acquire and those which can be released to private owners. This criteria should work toward the direction of and be based on government ownership of the scenic and wilderness lands and private ownership of the commercial lands.

Many of the exchange proposals are so clearly beneficial that it is unnecessarily time-consuming and costly to perpetually study them in such detail. This nonproductive red tape should be eliminated, and the Chief should direct those in the decision-making position to only call for the data necessary to make his professional recommendation.

For example, the 3,000 acres of Southern Pacific Land Company property in Blackwood Creek Canyon within the Lake Tahoe Basin has been studied many times over the years by the Forest Service. Placer County has passed a resolution calling for the Forest Service's acquiring the property by exchange; the Tahoe Regional Planning Agency recommends Forest Service ownership of this property; all the Forest Service studies recommend its acquiring this property; the conservation groups support the Forest Service ownership; and our company is willing to exchange the property to the Forest Service. The point is that everyone is in favor of the exchange, yet it is not being made.

Much of the appraisal data, such as timber volumes, can be contracted to a third party and the cost shared by the private owner and the government, which has the benefit of speeding up the process and is half as costly for each, instead of the present situation calling for duplicate appraisals.

The total State of California has much to be gained through an exchange program between private landowners and the government. This program is not making meaningful progress. The Chamber should use its influence to encourage the private and governmental persons involved to get on with it.

I suggest that the Chamber be the catalyst and pursue for the establishing of realistic priorities and timetables by those involved to actively conclude exchanges that are in the public's interest.

SOUTHERN PACIFIC LAND CO.,
San Francisco, Calif., December 9, 1972.

REGIONAL FORESTER,
U.S. Forest Service, 630 Sansome Street,
San Francisco, Calif.

DEAR SIR: This is in reference to the Forest Service proposal for the Trinity Alps Wilderness in which you have invited my views.

My remarks will be confined to the segment of the Forest Service proposal for the Trinity Alps Wilderness that directly affects the Southern Pacific Land Company property lying within the study area.

Southern Pacific Land Company owns 53,644 acres in the most easterly portion of the study area. This portion is not now included for wilderness and is identified as Exclusion 2 in the Forest Service proposal. The intent stated by the Forest Service is to keep its property roadless with a dispersed, trail access recreation area. The public, especially the private landowners within the area, would be invited to assist in completing this Forest Service management direction.

Before presenting the Southern Pacific Land Company's position on this most recent proposal, I think it worthwhile to briefly review what has taken place in the past.

The Southern Pacific Land Company property in this Exclusion 2 area was included in the original Salmon-Trinity Primitive Area established by the Chief of the Forest Service April 18, 1932.

The exchange of property between the Forest Service and Southern Pacific Land Company formally started in 1950 at a Planning Commission hearing held in Weaverville. The subject was, "Protection of the Salmon-Trinity Primitive Area", with the county favoring an exchange of equal value of land within the

county in order to not upset the tax base. We accepted this program, and until this year, have refrained from using our lands in the Primitive Area. We have not derived income from them, even though we have continued to pay the county taxes in anticipation of the Forest Service's acquiring them.

The Forest Service and Southern Pacific Land Company did attempt to work out various exchange proposals for the total Southern Pacific Land Company property lying within the Primitive Area from 1950 to September 3, 1964 when Congress passed the Wilderness Act 88-577. This act allows Congress ten years to reclassify certain primitive areas into Wilderness. We were advised that the act restricted the previous authority the Forest Service had to conclude the total primitive area exchange on which we had been working, and it now is only able to conclude small exchanges.

Our program since being advised of this in 1964 has been to encourage the Forest Service to acquire the Southern Pacific Land Company property lying within the Primitive Area in units within the Forest's authority in exchange for Forest Service land of an equal value. The Forest Service land we desire to acquire should preferably be in the same county in nonsensitive areas suitable for timber harvest or located in the path where urban type uses or other developments should logically take place.

Our position is that unique pristine areas which should be preserved should be owned by the Government as they are for the public's enjoyment. The commercial and developable lands should be in private ownership as private industry is more qualified and in its area of responsibility, supplying venture capital and taking the risk of success.

The present Wilderness Area proposal does not directly meet the problem or solve it by placing the Forest Service lands in a roadless category and expecting the private land owners to give up their rights on the adjacent properties. The Forest Service proposal brings out that access to private inholdings must be assured and the Forest Service has no control over developments on private lands.

The issue is: Does this land have the uniqueness to justify the wilderness or primitive type classification for the public's benefit? If so, the property in this classification should be owned by the public because of the highly restrictive uses that are made on the property. It is unreasonable to expect private land owners to continue to pay the taxes and not receive an adequate return on the value of their land.

The continual studies, moratoriums and hearings are unnecessarily delaying positive action, and I can not understand why progress has to be so slow. The Forest Service proposal mentions that Southern Pacific Land Company officials have indicated a willingness to dispose of their lands to the United States by exchange or purchase. We still have the same position, but it is necessary we see action on this program. If the Forest Service desires to acquire the Southern Pacific Land Company property in the Primitive Area and will say which of its lands are available for exchange, we can conclude this matter very quickly.

As we have mentioned before, we have counted on this timber volume we have withheld from using for our timber program. We are being faced with very high county taxes on the land we are not using, and we can not indefinitely wait for an action program by the Forest Service. The time is rapidly approaching when we must consider alternative uses of this property and the present possibility of its remaining pristine in public ownership may be lost forever.

Very truly yours,

W. F. HERBERT.



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